

The FSIN – Province of Saskatchewan Gaming Partnership: 1995 to 2002

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Abstract

In recent years we have witnessed an increase in the number of two unrelated phenomena in Canada – collaborative partnerships and First Nations casino development. This thesis focuses on the integration of these two phenomena by examining the gaming partnership that the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan established in 1995. The thesis explores the factors that produced the partnership, the issues of negotiations that influenced the partnership arrangement, and the general nature of the partnership's framework from 1995 to 2002. In analyzing these aspects of the partnership, the thesis will address its fundamental question – what is the precise nature of the regulatory framework and its implications for the gaming partnership in Saskatchewan? This study reveals that there were deficiencies in the nature of the partnership's framework, particularly with respect to the accountability provisions of the partnering arrangement. Those deficiencies created an accountability crisis in the year 2000, which caused problems both for and between the partners. Eventually, however, the partners decided to move forward in a relatively positive and constructive manner towards a sustainable and successful partnering arrangement.

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To:
My parents,
Joyce and Carl

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List of Abbreviations

CDC	Community Development Corporation
COA	Casino Operating Agreement (1995 & 2002)
FSIN	Federation of Saskatchewan Indian Nations
FNARF	First Nations Addictions Rehabilitation Foundation
IGR	Indigenous Gaming Regulators
SIGA	Saskatchewan Indian Gaming Authority
SLGA	Saskatchewan Liquor and Gaming Authority
SIGL	Saskatchewan Indian Gaming Licensing

Chapter One: Introduction

1.1 Introduction

In 1995, the intergovernmental partnership between the Province of Saskatchewan and the Federation of Saskatchewan Indian Nations (FSIN) was established as a result of a two year consultation and negotiation process involving Aboriginal² leaders and the Province of Saskatchewan. These negotiations were initiated in response to two significant Aboriginal gaming issues in the province: sovereignty and socio-economic development. First, the contentious matter of First Nations³ jurisdiction over gaming on reserves became a potentially explosive incident on the White Bear reserve in 1993, a situation requiring immediate mediation by government and Aboriginal leaders. Second, Aboriginal people experience the highest levels of poverty, unemployment and incarceration in the province, levels that exceed what are viewed as acceptable in the non-Aboriginal community. The FSIN and the Province of Saskatchewan therefore sought to construct an agenda to enhance socio-economic opportunities in the Aboriginal communities by incorporating a legal and regulated approach to gaming on and off reserves. Following two years of consultation and negotiation, the FSIN and the Province agreed upon a partnership arrangement. Consequently, the *1995 Framework Agreement* was instituted as the intergovernmental partnership's legal and regulatory framework that specified the provisions for the responsibilities of actors, casino operations and the profit sharing formula.

By 2000, the gaming partnership had experienced substantial success in terms of revenues generated, the numbers of Aboriginal people employed and overall growth of industry (ie. the development of Aboriginal institutions such as the Saskatchewan Indian

Gaming Authority). However, in June 2000, allegations of misappropriation of funds at the corporate level of SIGA precipitated precarious circumstances for the partnership. The stability and credibility of the partnership was compromised due to the serious nature of the accountability difficulties. Government opposition, media and the public voiced grave concerns over the accountability impropriety – and understandably so. Despite the importance of this partnership in Saskatchewan, in terms of socio-economic development for the Aboriginal and non-Aboriginal community, the research provided on this gaming partnership is limited. The intent is therefore to amend this lacuna by examining the fundamental nature of the gaming partnership from its inception in 1995 until the signing of the twenty five-year partnership agreement in 2002. After all, if deficiencies of the accountability framework can be determined, we can perhaps better understand what principal factors are necessary to develop a model for sustainable, and successful partnerships between Aboriginal governments and other orders of government.

1.2 Objective and Research Questions

The overarching objective of this thesis is to examine fundamental issues related to the partnership for gaming established in Saskatchewan between the Province of Saskatchewan (Province) and the Federation of Saskatchewan Indian Nations (FSIN) on February 10, 1995. More specifically, it examines the genesis, the nature and scope, and the accountability framework of that partnership from its original *1995 Framework Agreement* to the twenty five-year agreement signed in 2002. The 1995 accountability framework became a major issue of contention during the course of an investigation into some financial management practices of the agency established by the FSIN, namely the

Saskatchewan Indian Gaming Authority (SIGA), to develop and operate its casinos. One of the major issues surrounding that investigation, was which order of government was responsible for probity in the financial management of funds generated through the gaming partnership between the FSIN and the Province. This thesis does *not* focus on the question of whether the financial management practices were contravened. Instead, it focuses on the accountability framework of the collaborative partnership. The central objective of this thesis is to answer four fundamental questions related to the gaming partnership between the FSIN and the Province:

1. Why did the partnership on gaming develop between the FSIN and the Province?
2. What was the precise nature and scope of that partnership in 1995?
3. What was the nature of the management and accountability framework of that partnership prior to the investigation regarding allegations of financial mismanagement?
4. What changes, if any, were made to the management and accountability frameworks of that partnership, after the conclusion of the review related to those allegations of financial mismanagement?

Research on the effects of this partnership on the goals of the FSIN and the Province of Saskatchewan would be useful. Given that the First Nations casinos have been operational in Saskatchewan for approximately eight years now, research data would be available to answer a variety of questions related to their effect. However, such research is beyond the scope of this thesis.

1.3 Theoretical Perspectives on Partnerships

The objective of this sub-section is to provide some theoretical perspectives on relationships in partnerships with a special emphasis on accountability in partnerships. Such perspectives are very useful in understanding the FSIN – Province of Saskatchewan

gaming partnership. For that purpose a brief review of the key points in the literature regarding the following matters is provided below: (i) the definition of partnerships; (ii) the types of partnerships; (iii) the factors that produce partnerships; and, (iv) the factors that contribute to the quality and the success of partnerships.

(i) *Defining Partnerships*. The term ‘partnership’ has many different meanings in different contexts.⁴ The reason for this is that partnerships are complex and variable phenomena that do not lend themselves to a single and simple definition.⁵ However, for the purpose of this thesis, the ideal partnership is defined as follows:

“a relationship involving *the sharing of power, work, support and/or information* with others for the achievement of joint goals and/or mutual benefits.”⁶

The term ‘partnership’ has been misconstrued and over-used, and thus for analytical purposes, it is important to identify those elements that differentiate partnerships from other organizational relationships. Some of the more distinguishing elements of a partnership include the following: the partners identify a potential synergistic relationship; the objectives of a partnership are social in addition to commercial; the nature of relations are based on “mutuality”⁷; partnerships typically pass through the stages of a life cycle, wherein modes of governance and relationships change; and because partnerships are non-static and dynamic, their processes need to be assessed and evaluated as they evolve.⁸

(ii) *Partnership Typology*. Partnerships can be categorized according to a range of characteristics that identify specific dimensions or activities in various types of partnering arrangements. These broad categories are useful both in categorizing classes of partnerships and also for understanding a particular partnership arrangement. Partnerships can be categorized by assessing the following: the power base of the partnership

arrangement, the purpose of the partnership, the key actors involved in the partnership, the life stage that the partnership is in, and the ‘implementation mechanisms’ of who does what, and how in the arrangement.⁹ The four types of partnerships generally derived from these sets of characteristics are the collaborative, the operational, the contributory, and the consultative partnerships.¹⁰

The ‘collaborative partnership’ involves power sharing, wherein each partner foregoes a certain level of autonomy, and thus there are shared decision making processes involved. In such a partnership the partners aim more towards working together in performing various roles and responsibilities and there is the tendency for “the pooling of resources, such as money, information, and labour to meet shared or compatible objectives,”¹¹ The ‘operational partnership’ refers to those that share work and resources, but do not share decision-making powers. In most operational partnerships, there is a substantial level of coordination; however, one partner generally maintains the majority of control. Many intergovernmental partnerships are of the operational type, wherein the departments involved maintain jurisdictional authority but emphasize the “harmonization of action.”¹² The ‘contributory partnership’ is not generally considered as a true partnership, because they do not have operational or decision-making involvement, rather the support is usually in the form of funding or sponsorship. Lastly, the ‘consultative partnership’ is one that involves the solicitation of advice from outside of government such as organizations, groups or individuals, and generally takes the form of advisory committees or councils.¹³

These four categories are ideal type models designed to approximate reality, but they are not perfect models of reality. In practice the extant partnerships may contain

elements of two or more of those models. It is possible to have hybrid models that embrace the various characteristics of all models. Furthermore, partnerships are organic entities that may therefore evolve from one type to another.¹⁴ Thus, it is important to keep these models in mind to explain transitional or evolving features of any partnership over time.

(iii) The factors that produce partnerships. The emergence of the partnership phenomenon in the public sector has been in response to a number of interrelated factors that influence public sector management. Some of the more notable challenging factors facing governments include: fiscal restraints, the increased complexity and interdependence of social issues, an increased demand for greater citizen involvement and quality program and service delivery, the globalization of economies, and the rapid advances in information technology.¹⁵ As a result of these pressures on public-sector management, government has introduced some alternative approaches to adapt to increasing demands including a greater reliance on the use of partnerships.

While the benefits of collaborative partnerships will vary from partnership to partnership, there are inherent advantages to partnerships that motivate organizations and governments to initiate them. There is evidence to suggest that collaborative partnerships are a synergistic means to achieve objectives, resolve conflict and empower disadvantaged individuals, groups, or organizations.¹⁶ Partnerships are particularly useful in dealing with important matters in times of resource constraints. The reason for this is that they facilitate the sharing of resources (i.e., financial, infrastructure, skills and knowledge), they increase levels of participation, they promote shared learning, they improve effectiveness with a broader base of expertise, they encourage the growth and

development of institutions, and they foster harmonious relations.¹⁷ Effective partnerships develop relationships that encourage trust, mutual dialogue, commitment, and cooperation. Benefits occur as the ownership for problem solving processes is shared, social capital is built through reciprocal relations, and decision-making powers are diffused amongst partners.

Collaborative partnerships are a synergistic means of achieving various socio-economic goals that would otherwise be unattainable. Due to the involvement with a broad range of organizations, groups and/or individuals, governmental agencies can interact with several participants to formulate innovative and collaborative approaches for problem solving.¹⁸ This is not to say that governmental agencies can engage in partnerships without encountering difficult adjustments and potential risks. After all, due to the need to share decision-making power in partnerships, governmental agencies must adapt their governance and accountability frameworks as well as their approaches to planning, policy development, program design, and service delivery.¹⁹ One method available to governments in mitigating the problematic and risky aspects of partnerships is to be cognizant of the factors that enhance the quality of partnership relations and the success of partnering throughout its life cycle.

(iv) Factors that influence the quality and success of a partnership. Due to the wide spectrum of partnerships, and their complexity, identifying the factors that enhance the degree of success is very difficult. However, it is reasonable to suggest that the quality and success of a partnership is largely determined by: (a) the overall effectiveness of its partnering relations, (b) the clarity of goals, responsibilities and expectations of the partnership, and (c) the nature of the accountability framework. This list of influential

factors is not exhaustive, but does provide some of the fundamental prerequisites for a successful partnership which are discussed below.

(a) Partnership relationships. The overall effectiveness of the relationships within a partnership is a major determinant for the level of quality achieved in that partnership. Some of the more significant aspects that facilitate the success of a partnership are dependent upon the following partnering relations - the degree of mutual confidence and trust amongst the partners, and the level of commitment to cultivate and manage relationships.²⁰ According to Vangen and Huxham, “if you are seriously concerned to achieve success in partnership, be prepared to nurture...and nurture...and nurture.”²¹ The partners therefore need to develop a strong willingness to work together, to build trust, to build strong personal relations, to be transparent, and to adapt to unforeseen situations. Furthermore, partners must demonstrate a tolerance for sharing power, decision making, and participation and representation in relations of the partnership with other organizations.²² Due the horizontal structure of power sharing, partnering relations can be altered positively because adversarial relations are replaced with cooperation and trust, and partners’ differences are negotiated rather than litigated.²³ However, difficulties can emerge from the high degree of mutual adjustment that is necessary to achieve successful partnering relationships. For example, if the power relationship amongst partners is not mutually acceptable, the essential component of trust is damaged, or the process of trust building is hampered.²⁴

In partnerships, the reality of the situation is that the elements of trust, interpersonal relationships, communication and mutual understanding have as much influence on the success of the partnership as funding or institutional features.²⁵ Quality

partnerships therefore need to incorporate elements that bolster behaviors that facilitate innovative yet realistic approaches for its relationships. This includes the need to recognize the implications that differing organizational, management and traditional value systems have on the partnership. Partnership consultation, for example, may be hindered due to differing notions on management schemes. This can be an important factor in cases involving Aboriginal governments or organizations that are inclined to operate on a non-hierarchical and ‘communitarian orientation,’ partnering with other governments and organizations that tend to be hierarchical and organizational or even individualistic orientation.²⁶ Given the different cultural or organizational values and perspectives, it is essential to develop clear understandings of the ‘other’, promote dialogue, and identify common interests.

(b) Clarity of objectives, responsibilities and expectations. An important pre-requisite for successful partnerships involves the construction of a solid relational framework based on clarity of objectives, responsibilities and expectations among the partners. The sustainability and level of commitment in a partnership is heightened with a more formalized agreement that delineates procedures, structures and protocols.²⁷ Included in this framework should be a clear specification of the overall objectives, roles and responsibilities of the partners. Furthermore, it is crucial that the partners balance their expectations with their capacities, which as a result, should help identify the risks involved in the arrangement.²⁸ The partners also need to determine the precise nature of their objectives, purpose, values and anticipated outcomes. In addition to identifying agreed upon principles, the partners need to ensure that planning guidelines, performance indicators, and evaluation measures are specified and implemented in their arrangements.²⁹

Achieving objectives and maintaining effective collaborative partnerships is, to a certain extent, dependent upon the leadership of a partnership. The expectation of the leadership role is to formulate and realize a vision, while building consensus and working cooperatively with others to achieve the aims of the partnership.³⁰ For governmental stakeholders in a partnership it is important that they ensure that their values are respected and that the interests of their respective communities are protected. However, assuming such a leadership role requires sensitivity to a delicate balance of power because the partnership is more effective and sustainable when a level of mutual dependence and power sharing is exercised.³¹ To overcome the potential problems of a dominant partner, it is useful to institute approaches that help build capacities for the less powerful partner or partners.³² Building the capacity of partners is beneficial not only for relations between all partners, but also for the success of the partnership as a whole because each partner can make a better contribution to the shared tasks.

(c) Accountability framework considerations. Before proceeding with the implications of accountability aspects to the success of the partnership, it is beneficial here to define the terms ‘accountability’, ‘responsibility’, and ‘liability’. For the purposes of this thesis the following conceptualization of ‘shared accountability’ is very useful.

“Shared accountability is a relationship based on the obligation to demonstrate and take responsibility for performance in the light of agreed expectations. This means that in intergovernmental partnerships, there are three kinds of accountability relationships:

- ♦ accountability amongst the partners;
- ♦ accountability between each partner and its own governing body; and
- ♦ accountability to the public.”³³

Caiden contends that accountability practices are maximized when the elements of responsibility, accountability and liability are integrated. He defines these key terms as follows:

“[T]o be *responsible* is to have the authority to act, power to control, freedom to decide, the ability to distinguish (as between right and wrong), and to behave rationally and reliably and with consistency and trustworthiness in exercising internal judgement. To be *accountable* is to answer to one’s responsibilities, to report, to explain, to give reasons, to respond, to assume obligations, to render a reckoning and to submit to an outside or external judgement. To be *liable* is to assume the duty of making good, to restore, to compensate, and to recompense for wrongdoing or poor judgment.”³⁴

Broadening these definitions with an Aboriginal perspective on accountability and responsibility, T. Alfred asserts that:

“[a]ccountability in the indigenous sense needs to be understood not just as a set of processes but as a relationship....[and] the legitimacy of leaders and of governments is determined in part by the degree to which they adhere to accountability procedures, but to an even greater degree by the success leaders have in cultivating and maintaining relationships.”³⁵

Partnerships are based on relationships, and may include different organizational cultures, yet as Pocklington and Pocklington argue there are “remarkable similarities” between the basic structure of Aboriginal and non-Aboriginal political morality.³⁶ Moreover, partnerships involve the sharing of responsibility, liability and accountability. Therefore, each partner should be transparent and honest about mutual concerns that have potential to affect the efficacy of the partnership.³⁷ To strengthen the level responsibility amongst partners, a formalized accountability framework in a written agreement is essential. Accountability requirements for an arrangement include explicit stipulations for reporting, monitoring and evaluation. Because the partnership is non-static process, the partners must be willing to revisit and if necessary amend the mechanisms instituted for the assessment, evaluation, and adjustment processes of the arrangement.

Effective communication, which includes representation and participation in meetings, is important to the reporting and evaluation aspects of accountability procedures. Moreover, the performance evaluations amongst partners need to address the actual achievement of objectives, provide feedback on performance results, and permit

for any necessary adjustments. Instituting these types of implementation practices will enhance the success of the partnership. The partners must consider accountability mechanisms as a component of an integrated process. Therefore sufficient information, ongoing monitoring and credible reporting, partners' compliance to expectations, and institutional learning are all necessary mechanisms for partnering arrangements.

Accountability relies heavily upon the reporting and monitoring aspects between partners. The Auditor General asserts the following preferable features for the reporting requirements of partnerships: "clear context and strategies, meaningful performance expectations, results reported against expectations, demonstrated capacity to learn and adapt, and fair and reliable performance information."³⁸ As for effective monitoring strategies, partnerships need to consider the nature of the agreement, the capacity of the partners, the complexity of the arrangement, the "specific accountability requirements for each partner" and the level of risk involved in the arrangement.³⁹

The foregoing perspectives drawn from the literature on partnerships are essential in understanding the various issues related to the FSIN-Saskatchewan gaming partnership examined in this thesis. In addition to shedding light on the nature and operation of that partnership, those perspectives will serve as important bases for my concluding chapter which discusses matters related to the lessons that can be drawn from the evolution of that particular partnership and ways that it can be improved in the future.

1.4 Value of the Thesis

This thesis will make an important contribution both to understanding and improving partnerships in Saskatchewan and the literature on partnerships in at least four

important ways. First, the analysis of the management and accountability frameworks of intergovernmental partnerships will contribute to the literature on the topic of developing Aboriginal-governmental partnering models. For instance, in a collaborative partnership arrangement Aboriginal organizations and governmental agencies must work together to formulate frameworks, and implement cooperative strategies for the attainment of mutually acceptable objectives, and the means by which to attain them. The relationship must therefore be based upon mutual trust and respect, cooperation, well-defined roles and responsibilities, established frameworks, and demonstrated commitment. In other words, harmonious relations are essential for the success of a collaborative partnership.

Second, this thesis should prove useful in revealing the effect that such intergovernmental partnerships can have for economic development in Saskatchewan, particularly within the Aboriginal community. It is therefore important to research the challenges, risks, and successes of the partnership in order to further develop models that can be applied to potential partnership arrangements. Innovative strategies are important for economic development in Saskatchewan for both Aboriginal communities and in the general populace. The theoretical literature on partnerships will be useful as models for Aboriginal economic development partnerships, of which are fundamental to this thesis.

Third, this thesis will also make a contribution to the expanding body of literature on various types of intergovernmental partnerships. Although there has been a substantial increase in research on key dimensions, functions, benefits and risks of partnership arrangements, much remains to be conceptualized and analyzed. Similarly, although there has been some attention devoted to accountability frameworks by Robert Behn and Paul Thomas, who provide an analysis of accountability frameworks within the scope of

partnerships undertaken as part of the new public management initiatives, further analysis is desirable.

Fourth, the analysis of this particular collaborative partnership will make a contribution to existing literature on partnerships. This study of the gaming partnership between the Province and the FSIN will provide an additional case study in that body of literature. More specifically, this particular case study will be useful in increasing the body of literature on partnerships and accountability in partnerships involving these two orders of governance, which to date is still relatively limited.

1.4 Methodology

The major methodology used in this thesis is content analysis of various types of documents.⁴⁰ This includes primary sources from both the FSIN and the provincial government such as statutes, annual reports, legislative debates, and agreements. The thesis also makes extensive use of secondary sources such as newspaper and magazine articles that devote attention to various developments in the FSIN – Province of Saskatchewan gaming partnership. Secondary sources derived from journal publications and books provide the key literature that is necessary to explain the theoretical aspects of the partnership phenomenon.

1.5 Overview of the Chapters

The thesis consists of five chapters. This first chapter introduces the gaming partnership between the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan as an important partnership and as the case study of this thesis.

The objective of the thesis, the research questions, the value of the thesis, and the methodology used for this research project is briefly discussed. The chapter also examines the theoretical perspectives that explain various facets of the partnership phenomenon. Toward that end, the chapter provides the definition and typology of partnerships, the motivational factors that produce partnerships, and an analysis of the principles and propositions of what is likely to contribute to partnerships quality and success.

Chapter Two examines jurisdictional and regulatory imperatives, and the economic, social and political factors that were the catalysts for the genesis of the gaming partnership between the FSIN and the Province of Saskatchewan. The focus and purpose of Chapter Three is to explore the issues of the 1995 negotiation process, and the nature of that partnership agreement that ensued. This chapter therefore offers an examination of the two key documents of the partnership - *The 1995 Framework Agreement* and *The 1995 Casino Operating Agreement*. These two agreements are crucial to the partnership because they prescribe the regulatory, operational, management and accountability provisions for the arrangement.

The overarching objective of Chapter Four is to address three fundamental questions. First, what accountability challenges emerged in 2000 from the established framework of the FSIN – Province of Saskatchewan partnership? Second, what were the partners' reactions to these accountability problems, and what implications did these accountability challenges have for the partnership? Third, how has the agreement changed from its predecessor as a result of the accountability problems and the negotiation process; and thus what provisionary reforms were instituted in the 2002

agreement? The concluding Chapter Five will provide a summary of the assessment and analysis of the development, nature and challenges of the FSIN – Province of Saskatchewan partnership. It will also provide an explanation of some of the valuable lessons learned in this case study that will be useful for the future of the gaming partnership, as well as other partnerships.

Chapter 2: The Genesis of the Gaming Partnership

2.1. Introduction

The phenomenon of intergovernmental partnerships has proliferated over the past two decades as an innovative strategy for solving various problems faced by governments and their respective organizations.⁴¹ This includes partnerships between Aboriginal governments and their federal, provincial and local counterparts. The importance of such partnerships is underscored by a document of the Department of Indian and Northern Affairs Canada which states that “[p]artnerships are crucial tools in Aboriginal economic development.”⁴² Many such partnerships between Aboriginal governments and their federal and provincial counterparts are developed as a response to the grim socio-economic realities found within Aboriginal communities. Such intergovernmental partnerships are of particular importance in Saskatchewan, where the number of partnership arrangements between Aboriginal and provincial governments exceed those in the rest of Canada.⁴³ The gaming partnership established in 1995 between the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan, is an arrangement that was, for the most part, created in response to a highly contentious jurisdictional issue surrounding gaming activities on reserve.

Despite the potential implications of this issue, and the controversial nature of gambling activities in general, there has not yet been an attempt to provide an explanation of the underlying factors that account for the genesis of this important partnership. The overarching objective in this chapter is to provide such an explanation.

2.2 Determinants of the Partnership

The gaming partnership between the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan is largely a product of governmental objectives and imperatives. More specifically it was a function of three sets of such shared objectives (i.e., financial, social, and political), and two major sets of imperatives (i.e., jurisdictional and regulatory). These are discussed in turn below.

2.2.1 Financial Objectives of the Partnership

Given the demographic profile for the Aboriginal population of Saskatchewan, and the urgent need to ameliorate the existing socio-economic conditions of Aboriginal people, the FSIN and the Province of Saskatchewan shared a mutual objective to initiate an economic development strategy. In light of recognizing sizeable growth in the gaming industry throughout Canada and the United States, Saskatchewan Aboriginal leaders and the Province of Saskatchewan envisioned casino development in Saskatchewan as one enterprise that offered significant financial potential for them that could be redistributed for the benefit of Aboriginal and non-Aboriginal communities in the province. A partnership arrangement between the FSIN and Province generated a strategy for shared Aboriginal economic development aims⁴⁴, and provided for an equitable allocation of revenues for Aboriginal and non-Aboriginal people across the province.⁴⁵

Prior to the creation of the gaming partnership arrangement, investigations into tribal gaming in the United States and casino development in Canada were conducted by FSIN officials and the provincial government.⁴⁶ Once investigations were completed, the Province and the FSIN, upon consideration of key financial issues, concluded that casino

expansion was a viable economic development project in Saskatchewan. As a result of the studies into gaming, the Province and the FSIN identified three specific financial factors as indicators that it was prudent to proceed with the development of First Nations casino operations through a partnership arrangement.

The first financial factor was that the significant outflow of Saskatchewan dollars spent in the United States on gambling was regarded as an indication that the market for casino expansion in the province was sustainable, and that these monies should be spent within the province. In 1993 for instance, it was projected that Saskatchewan citizens, who were interested in gaming activities, would expend approximately \$6.08 million dollars in the province, as opposed to spending it on gaming activities in the United States.⁴⁷ This outflow of Saskatchewan capital captured the attention of elected officials in the Saskatchewan provincial legislature. In at least one legislative debate, for example, a government Minister, Eldon Lautermilch, stated “that there was a massive bleeding of gaming dollars” bound for gambling destinations outside of province that required further investigation, and the implementation of measures to mitigate this outflow.⁴⁸

The second financial factor was the positive effect of gaming establishments for the levels of economic prosperity, self-sufficiency and sovereignty achieved by certain Indian tribes in the United States. This tribal gambling experience in the United States served as an important precedent for First Nations in Saskatchewan. To determine the feasibility of casino development as on-reserve business opportunities, the FSIN conducted surveys and research in the tribal gambling industry in the United States.⁴⁹ The FSIN regarded the American tribal gambling business, which generated \$4-6 billion dollars in revenue in 1994 alone, as a positive indicator that gaming was a viable

economic development initiative.⁵⁰ It was also heavily influenced by the multitudes of tribal-state gaming agreements in the United States. Indeed, by 1995 twenty-three states in the United States had established tribal-state agreements for the operation of casinos on 115 reserve lands which collectively were reaping huge revenues for tribal governments.⁵¹ The analysis of the American initiatives was influential on the First Nations leadership in Saskatchewan because they recognized important parallels between them, particularly in terms of fostering economic development.⁵² One noteworthy parallel is that has gambling provided a feasible financial venture for tribal governments in the United States because most other financially beneficial ventures were not willing to locate on reserve lands.⁵³ This was also the case in Saskatchewan where attracting financial capital for on-reserve business projects has historically proven very difficult and in some instances impossible.

Moreover, Saskatchewan First Nation leaders articulated the difficulties of raising financial capital on many occasions. For instance, in 1993 at the Vancouver native gaming trade show, Saskatchewan Aboriginal entrepreneurs joined their counterparts from other provinces to voice their frustration at the demonstrated lack of confidence by Canadian bankers when approached about economic start up costs for gaming business ventures. Their frustration is reflected in a statement by the chair of the board for the Bear Claw Casino on White Bear reserve in Saskatchewan, who said at the conference, “[w]e went to all the financial institutions. We were a joke to them. They wouldn’t touch us with a 10-foot pole.”⁵⁴ Similar circumstances encouraged Aboriginal businessmen to look south of the border, where the American investors offer bands money for casino operations in exchange for “40% of the take.”⁵⁵

The FSIN also became aware through studies that the American tribal gaming boom facilitated the means for certain tribes to achieve economic self-sufficiency, and therefore promote nation building and sovereignty. This new tribal business venture in the United States became an opportunity to transform its political and economic organization by carving a path for economic prosperity through gambling ventures.⁵⁶ The FSIN observed that the gaming industry in the United States represented “a stand for political independence as tribes assert their sovereignty right to determine for themselves what they can control on tribal lands”⁵⁷ - an inspirational precedent for the FSIN. Tribal bands in the United States were gaining economic independence that enabled them to participate in employment and project opportunities that had otherwise been well beyond the scope of attainment.⁵⁸

The third financial factor that contributed to the decision to establish casinos was that the Province and the FSIN realized that gambling activities across the nation were generating sizable net revenue increases within a relatively short time span. What convinced both of them of the importance of entering the gaming sector were statistics indicating that gambling revenues in Canada significantly increased from the early 1980s, to reach a net profit of \$4.6 billion in 1995,⁵⁹ and casino net revenues in Canada increased from \$15 million in 1990 to \$2.6 billion in 1997.⁶⁰ The Province regarded these financial data as indicators that casino development could thrive and deliver advantageous profits for Aboriginal and non-Aboriginal communities throughout Saskatchewan. The FSIN and the Province therefore viewed casino expansion as a tremendous opportunity to produce substantial financial revenues provided that appropriate regulations and provisions were implemented.⁶¹

In summary, given the considerable financial potential from gaming, the FSIN and Province regarded casino development in Saskatchewan as a pragmatic means to improve socio-economic conditions in Aboriginal communities. The FSIN and the Province envisioned casino development as a viable economic development strategy whereby both parties of the partnership could benefit financially through shared revenues and resources. Moreover, the American tribal gaming experience provided an example of an Aboriginal development project that contributed to economic self-sufficiency and nation-building.

2.2.2 Social Development Objectives of the Partnership

A second major factor that contributed to the creation of the FSIN – Province of Saskatchewan gaming partnership was the social development objectives of the First Nations governments and the provincial government. Their mutual objectives were rooted in a shared understanding of the need for social development throughout the province both in Aboriginal and non-Aboriginal communities.

Both the provincial and Aboriginal governments were particularly cognizant of the need to deal with potentially increasing social development problems among the First Nations' population stemming from a rapid increase in population without a corresponding increase in social development opportunities.⁶² At the time that they began to consider the gaming partnerships both orders of government had developed a shared understanding that the future of the province was heavily dependant on what happened to the rapidly increasing Aboriginal population. Both recognized that such an increase in population would only have a positive effect on the province if there were substantial improvements to the socio-economic conditions among members of Aboriginal

communities. They also realized that there are some substantial barriers to socio-economic development in Aboriginal communities throughout the province, the most notable of which is the low levels of human and social capital.

To fully understand the importance of such obstacles within the Aboriginal communities, it is important to delineate the demographic profile of the Aboriginal population within Saskatchewan. Some of the most important statistics are as follows: the average personal income level is approximately one-half of that of the non-Aboriginal individual; only 31percent of the Aboriginal individuals of labour-force age are employed; 61percent of Aboriginal persons over the age of 15 do not complete their high school education; and infant mortality rates are 2.5 times the national average.⁶³ Furthermore, if current Aboriginal birth and education rates persist, and opportunities for Aboriginal people do not improve, the outcome will be a substantial increase in Aboriginal unemployment, decreased personal incomes, and substantial increased reliance on government assistance.⁶⁴

The challenges and barriers that arise in Aboriginal socio-economic development projects vary from reserve to reserve depending on factors such as the natural resources available, the location or access to market, the size of the band, economies of scale, and the degree of human capital within the community.⁶⁵ These factors also play an important role in determining the feasibility of the business and economic development strategies, and their level of success.

The FSIN and the Province agreed that the development of a partnership in the gaming sector would contribute to their shared objective of increasing social development in the Aboriginal sector both by employing Aboriginals in casinos and by

using a substantial portion of the profits that each of them would collect to foster social development. The provincial government was convinced that this was a good investment and for Aboriginal and non-Aboriginal communities and it decided to devote \$1.75 million dollars to “cover the costs of developing the [gaming] partnership” with the FSIN.⁶⁶ According to the Saskatchewan Minister responsible for economic development at that time, that funding provided a means to establish the gaming project aimed at building a “capital pool to build and renew the infrastructure [in Aboriginal communities] that has been sadly ignored by governments since the treaties were signed over a hundred years ago.”⁶⁷ The financial investment made by the Province was an essential ingredient to the development of First Nations casinos to fund the initial operational cost. This funding was required, because one of the greatest constraints in the establishment of Aboriginal business ventures is to obtain access to financial capital.⁶⁸

As a means to enhance socio-economic development in the Aboriginal sector, the FSIN and provincial government agreed that hiring of Aboriginal people should be a priority for casinos operated by First Nations. Both of them recognized that this would allow Aboriginal workers to gain employment experience, skills and training that would result in enhanced human and social capital within their communities. The result of that agreement is that approximately seventy percent of the employees at the Saskatchewan Indian Gaming Authority (SIGA) are Aboriginal, and as of March 2002, SIGA employed 1107 people.⁶⁹ Both of them recognized that in addition to attaining employment at the casinos, the training and skills that workers gained at SIGA run casinos would be transferable to other enterprises whenever individual chose to change employment paths. For its part SIGA has had the long-term objective of increasing the Aboriginal percentage

of employees to eighty percent, and aims to develop a human resource development strategy that includes post-secondary education for management personnel.⁷⁰ To facilitate the strategy to further Aboriginal education, SIGA has initiated a partnership with the First Nations University of Canada (formerly the Saskatchewan Indian Federated College). Through this partnership a “Gaming Administration and Casino Management” certificate program was developed to address the need for a skilled labour force with specialized training in casino management.⁷¹ As a proponent of advancing education, skill and training levels SIGA, the FSIN’s agent in the partnership, is in the process of enriching human capital amongst Aboriginal people.

In summary, for the FSIN and for the Province, casinos were a part of an economic development strategy that is important to eliminate the immense socio-economic inequities that exist between Aboriginal and non-Aboriginal peoples, to reduce the devastating dependency cycle, to increase social and human capital, and to improve community infrastructures. They also believed that when economic self-sufficiency is achieved within Aboriginal communities, both Aboriginal and non-Aboriginal citizens benefit because Aboriginal people are able to make an even greater contribution to the growth of the economy.⁷²

2.2.3 Political Objectives of the Partnership

The third major factor that contributed to the establishment of the FSIN - Province of Saskatchewan gaming partnership was their respective political objectives. The FSIN’s political objectives were to enhance political autonomy of First Nations by enhancing their level of economic self-sufficiency. For its part, the FSIN believed that

Aboriginal economic development is inextricably linked to self-governance and nation-building. Indeed, there is a belief that economic and political development are mutually reinforcing.⁷³ Whereas some believe that economic development is a pre-condition for political development, others believe that without political development “economic development is likely to remain a frustrating elusive dream.”⁷⁴ Those who espouse such views believe that the dependency cycle of Aboriginal governments and their communities cannot be transformed to a state of economic self-sufficiency without gaining the capacity to generate their own wealth.⁷⁵ The postulation is that a strong economic base is crucial for Aboriginal communities to preserve traditional values, practices, and cultures and to strengthen the community spirit.⁷⁶

Gaining control of casinos was also viewed an important step in the political as well as the economic development of First Nations. Among other things, it was hoped that it would lead to the creation of some important governance institutions such as the Community Development Corporation (CDC) that consists of representatives from the host Tribal Council and other Tribal Councils.⁷⁷ These representatives distribute revenues in communities for the purposes of augmenting socio-economic, education, cultural, health, justice and recreational development. The desire for such institutions to be relatively autonomous from the provincial government is underscored in the *1995 Framework Agreement* which states that the FSIN trustees are empowered to use their own discretion to develop strategies to enhance the socio-economic wellness of their communities.⁷⁸ Through the creation of such institutions Aboriginal people are “regaining control over decisions that affect their communities....”⁷⁹ According to the Royal Commission on Aboriginal People (RCAP) the creation of First Nation institutions

and control over decision-making within such institutions is an essential ingredient to building and sustaining Aboriginal economic self-sufficiency and political autonomy.⁸⁰

Promoting Aboriginal self-determination was also an objective of the provincial government in Saskatchewan. This aim is reflected in the Lieutenant Governor's Speech from the Throne in April 1992:

Aboriginal people strengthen Saskatchewan's rich cultural identity. My government recognizes and will promote the right of Indian and Metis people to self-determination and self-reliance, respecting also their right to define, apply and practice their own cultures, customs and traditional community values.⁸¹

Entering into a gaming partnership was in keeping with that objectives articulated in the Speech from the Throne.

In summary, the FSIN and the Province of Saskatchewan entered into a partnership arrangement with the shared purpose of promoting Aboriginal self-determination and self-sufficiency. The cooperative strategy of a partnership advances self-determination by entrusting the control over decision-making and economic advancement to the Aboriginal leaders and their communities.⁸²

2.2.4 Jurisdictional Imperatives for the Partnership

A fourth factor that contributed to the creation of the FSIN – Province of Saskatchewan partnership in gaming was the jurisdictional imperatives of the two governmental protagonists. Despite the mutual socio-economic and political objectives for casino development in the province, the FSIN and the Province diverged on their view of jurisdictional authority of gaming activities on-reserve. The jurisdictional aspect of gaming on reserve was a contentious issue between Aboriginal organizations and the Province of Saskatchewan because the legal obligation of the Province, with respect to

gaming, is located in the s. 207 of *Criminal Code* which specifies that all gaming activities are provincial jurisdiction. Conversely, The FSIN and Aboriginal leaders assert that gaming on-reserve is an inherent right.⁸³ This dichotomy between the two parties on this issue created substantial tension. These tensions were exacerbated in 1993 with the occurrence of a volatile situation on the White Bear Reserve. It is useful to explain the circumstances surrounding the incident on the White Bear Reserve because the situation did heighten the jurisdictional controversy of gaming on-reserve, and required an expeditious resolution by the Province and Aboriginal organizations.

In February 1993, Chief Shepherd and Council opened a casino on the White Bear First Nation Indian Reserve because they believed that a casino operation, similar to the ones they had studied and visited in the United States, had great potential to improve the socio-economic difficulties on-reserve. The casino development on-reserve was perceived to be an inherent right, and was viewed as a plausible tourist industry that complimented the existing golf course and lake resort.⁸⁴ Before opening the casino Chief Shepherd generated letters explaining their intentions to government agencies, including the Carlyle Royal Canadian Mounted Police (RCMP) detachment. The Chief and Council also established a mandate for regulating and operating gaming on-reserve. However, on March 22, 1993, an inflammatory situation occurred as the RCMP executed an armed search warrant on the Bear Claw Casino (on the White Bear Reserve), seizing \$90,000 and all gaming activity equipment and laid charges against Chief Shepherd and three council members.⁸⁵ In October 1994, the charges were dismissed, even though the argument that the White Bear Reserve controlled and operated a ‘common gaming house’ was substantiated with evidence. The two reasons asserted in the decision to dismiss the

charges were that the Chief and Council “honestly believed that they did not surrender their rights to self-government,”⁸⁶ and “that a good argument exists that the White Bear First Nations has the right and ability to control gaming on the reserve as an aspect of the right to self – government protected under s.35 (1) of the Constitution Act, 1982 and s.91 (24) of the Constitutional Act 1867.”⁸⁷

The incident at Bear Claw Casino on the White Bear Reserve had the potential to be explosive, and to create inimical relations amongst the First Nations and the Province. Instead, the FSIN and the Province sought a collaborative, rather than confrontational, approach to resolve the jurisdictional issue of gaming. Their hope was that by addressing such issues through a collaborative approach, relations between the Aboriginal and provincial governments in the province were more likely to be more positive and productive in the future. The creation of a partnership arrangement was a mutually acceptable approach to settle the controversial jurisdictional issue over casino development in Saskatchewan.

To fully grasp the salience of the jurisdictional issues of First Nations casino development in Saskatchewan, a brief explanation of the historical context of gambling provisions in Canada is necessary. Gambling in Canada has grown exponentially over the past two-three decades. This is a trend that correlates with changes to gambling provisions in the *Criminal Code*. In 1892, for instance, the *Criminal Code* prohibited gambling activities; and, by 1925, games of chance were permitted at annual fairs and exhibitions. However, significant changes were instituted in 1969 and 1985 which transformed the nature and scope of gambling in Canada.⁸⁸

Since the s.190 amendment to the *Criminal Code* in 1969, lotteries, bingo and games of chance became a valuable source of revenue for government treasuries and charitable organizations.⁸⁹ This change allowed federal and provincial governments to “conduct and manage lottery schemes,” and license charitable organizations to do the same.⁹⁰ In June of 1985, the provincial and federal governments signed a contract referred to as the *Lotteries Agreement* that was contingent upon amendments to the *Criminal Code* being approved by December 31, 1985. Subsequently, amendments were made to what was in 1969, s190, to become s207. 1(a) – (h) of the *Criminal Code* in 1985.⁹¹ These changes were the outcome of federal – provincial deliberations surrounding the revenues and operations of lottery schemes. The changes to the *Criminal Code* ultimately transferred the federal authority of lottery and gaming activities to the provinces.

In order to gain control of these activities in 1985, the provinces agreed to pay the federal government one hundred million dollars over the period of three years to contribute to the Calgary Olympics. These funds were in exchange for the federal government’s relinquishment of future claims to the conduct and control of lotteries and gaming in the provinces.⁹² By removing the federal government from lotteries and gaming, control of the regulations and the distribution of proceeds from lottery and gaming schemes were ultimately provincially controlled. In other words, “gambling is still prohibited by the *Criminal Code* unless it has been licensed by the appropriate provincial authority, or unless it is being conducted by the province itself.”⁹³

The federal to provincial transfer of authority for gaming was problematic for First Nation bands for two reasons. First, due to the transfer, First Nations casino

development on-reserve was considered by the province to be a criminal offence pursuant of s207.(1)(a) of the *Criminal Code*. In accordance with the amendment to the *Criminal Code*, the provinces have sole jurisdiction on casino development. The First Nation therefore requires authorization through provincial licensing to “manage or conduct a lottery scheme....” on their reserve lands.⁹⁴ The problem arises because many First Nations perceive that the development and operation of casinos is within their jurisdictional rights on reserve land.⁹⁵ The contrasting provincial perspective is that all of the gaming activities throughout the province, whether on reserve or not, are a provincial jurisdiction. The Bear Claw casino incident in 1993 that occurred on the White Bear Reserve, serves to illustrate how the diverging views of the provincial and Aboriginal governments’ on jurisdiction have the potential to produce adversarial relations.

The second problematic aspect of the federal – provincial transfer of jurisdictional authority of gaming was due to the fact that First Nations leaders were excluded from these negotiations. Neither Aboriginal leaders nor organizations were consulted in the 1985 negotiations surrounding the gaming amendments to the *Criminal Code*.⁹⁶ It is plausible that had they been involved in discussions from the start, the jurisdictional issue of gaming would not have been as contentious, nor required courts’ involvement to the same degree as it has in subsequent years.

The problems were compounded because many Aboriginal leaders do not recognize the change in the *Criminal Code* related to gaming, due to their belief that it is their inherent right to exercise jurisdiction of all activities conducted on reserve lands. Some First Nations adopted this argument by claiming that s.81 of the *Indian Act* “provided for band ‘control and prohibition of public games...’”⁹⁷ This position however,

has not proven to be successful for First Nations. Even if the *Indian Act* made it possible to circumvent provincial jurisdiction, it would not work for First Nations because the *Criminal Code* supersedes the *Indian Act*. Granted, both the *Indian Act* and the *Criminal Code* are federal statutes, however the latter takes precedence and, therefore, favours provincial jurisdiction.⁹⁸

Regardless of the *Criminal Code*'s amendment granting jurisdictional authority of gaming activities to the province, Aboriginal leaders and the FSIN refute the amendment on the grounds of inherent rights. The diverging perspectives regarding gaming on reserve presented a challenging situation to the FSIN and the Province. The FSIN and the Province were anxious, however, to reach an acceptable agreement that “would bridge two competing views without permitting it to escalate into the situation that has been etched into our memories of another debate over the issue of a golf course in Oka, Quebec.”⁹⁹

To reiterate, the Province and FSIN sought a peaceful resolution to the White Bear situation rather than risk having acrimonious relations. The disparity over jurisdiction on-reserve was problematic for both parties, a problem that would necessitate a mutually acceptable resolution for the continuance of harmonious relations. The partnership arrangement between the FSIN and the Province provided an acceptable resolution for both actors who recognized that this was a potentially flammable issue if respectful approaches to the resolution of the jurisdictional issues were not pursued.

2.2.5 Regulatory Imperatives for the Partnership

Another major factor that contributed to the emergence of the gaming partnership between the FSIN and the Province of Saskatchewan was what might be termed regulatory imperatives. Regulatory imperatives are considerations that “focus on the conditions under which goods and services are produced and distributed....They are primarily in the form of standards...and relate to issues of safety, health, employment, the environment and a variety of social or welfare-related issues.”¹⁰⁰ Regulatory imperatives were particularly influential on the provincial government’s desire for a partnership in gaming, due to the related socio-economic implications of its activities. Specific considerations that led the provincial government to enter into the partnership were as follows:

- It was perceived by the province that there was “no gaming strategy” in an industry that was experiencing immense growth throughout North America.¹⁰¹
- The jurisdictional issue on gaming was a highly controversial topic of debate in the legislature that required an expeditious settlement.¹⁰²
- In light of the tremendous expansion in gaming in North America, the industry required a “very strong regulatory body [with] careful control and regulation;”¹⁰³ whereby the accountability aspect of gaming was “one of the prime and most important aspects...of the development of the casinos.”¹⁰⁴

The province acknowledged the need for a committed role in the establishment of a regulatory framework in which the gaming industry should function in Saskatchewan.¹⁰⁵

The province’s solution to manage the problems of jurisdiction, regulation, and accountability in gaming was threefold. First, by engaging in a partnership with FSIN the

issue of jurisdiction in gaming was, in part, resolved by establishing the means for some First Nations control of gaming through a collaborative partnership. Second, consolidating the two operations of the Liquor Commission and the Gaming Commission into the Liquor and Gaming Authority provided the improved regulation in gaming by establishing new regulation and review provisions. The Authority is a licensing and regulatory body that has two components: “to set out the rules and regulations for the Authority” (after and upon cabinet direction) and, an appeal board to “review decisions made with respect to regulations.”¹⁰⁶ By adding this component to the regulatory framework, the Province envisioned a strengthened approach to regulating an industry that was experiencing rapid expansion and change.

The province’s third initiative to address the issues of regulation and accountability in the gaming industry was to establish a new Crown Corporation. The Saskatchewan Gaming Investment Corporation was created to “establish, to operate, manage, and conduct casino operations in Saskatchewan under the full legislative authority of this Assembly.”¹⁰⁷ The accountability framework is similar to other Crown Corporations in Saskatchewan; and, in this instance, appointed four provincial representatives and three FSIN members. The Saskatchewan Gaming Investment Corporation’s mandate is twofold: (1) to ensure accountability of gaming through an administrative structure, and (2) to ensure the maintenance of proper accounting practices in order to control the gaming industry. The Crown Corporation was legislated in the Second Reading, Bill No. 72, in the legislature of May of 1994.¹⁰⁸ After deliberation on the gaming issues surrounding jurisdiction, regulation, management, and governance, the Province consulted with the FSIN about the prospect of forming a partnership. Because

both parties were cognizant of the synergistic relations produced by a partnership, the FSIN and the Province initiated a consultation process for an arrangement. Shortly, thereafter the Province and FSIN entered into negotiations to resolve differences and formulate a partnership arrangement.

2.3 Conclusion

In recent years we have witnessed an upsurge in two unrelated phenomena in Canada –collaborative partnerships and First Nations casino development. In 1995, these two phenomena merged to produce the FSIN-Saskatchewan gaming partnership. The key factors that led to the signing of that partnership agreement are three major sets of shared objectives (i.e, financial, social, and political) and two sets of imperatives (i.e., jurisdictional and regulatory). Evidently, what might be termed interjurisdictional emulation was also an influential factor as the FSIN and the Province studied and borrowed from the experiences of First Nation and state governments in the United States in making decisions regarding their partnership and the location and operation of casinos.¹⁰⁹

Given that the FSIN and the Province of Saskatchewan saw merit in establishing a casino development partnership to accomplish mutual objectives, the next step in the evolutionary process was to negotiate an agreement. The next chapter will focus on the fundamental issues of this negotiation process, and the nature of the key provisions for the resulting agreement.

Before turning to the next chapter, however, it is important to note that although the FSIN and the provincial government were the major protagonists in the partnership initiative, their decisions were not made without considerable public reaction, most of which was negative. Notwithstanding the various benefits that the FSIN and the provincial government believed could be derived from gaming, their decision to enter into a partnership that would expand gaming in the province was not without its critics. The expansion of gaming within the province ran into some strong organized opposition from the public at a very early stage. Such opposition was most visible in 1994 in a Saskatoon plebiscite which resulted in the obstruction of proposed casino development in that city. The opposition to the casino in Saskatoon was led by a citizens' coalition group which held rallies and circulated a petition to mobilize support against gaming activities in that city. Their work captured considerable media attention to and produced a strong opposition to the proposed casino development. In making the case against gambling the opponents cited studies by researchers who maintain that gambling does not generate additional revenue and employment, but merely diverts employment and revenue from other sectors of the local economy.¹¹⁰ While some of the opponents of the gaming initiative focused on economic arguments, others focused on ethical arguments regarding the involvement of the provincial and Aboriginal governments being involved in the casino industry. Ultimately, of course, neither the economic nor ethical arguments dissuaded the FSIN and provincial governments from entering into a partnership for gaming in the province of Saskatchewan. The reason for this is that, as has been explained in this chapter, there were three sets of objectives and two sets of imperatives that influenced their decisions to enter into the gaming partnership.

Chapter 3
***The Nature of Negotiations for and the Nature of
the 1995 FSIN – Province of Saskatchewan Partnership Agreement***

3.1 Introduction

The Province of Saskatchewan and the Federation of Saskatchewan Indian Nations (FSIN) shared financial, social, and political objectives that served as catalysts for the creation of a gaming partnership. Those objectives led them to engage in consultations and negotiations to produce a contractual agreement for the development of First Nations casinos in the province. The negotiations to establish the agreement between the FSIN and the Province of Saskatchewan were initiated in 1993 and completed in November 1995. The result of these deliberations was the signing of the two fundamental documents of the partnership: *The 1995 Framework Agreement (Agreement)* in February 1995, and *The Casino Operating Agreement (COA)* signed in November 1995. These two key documents contain the regulatory, operational, and management provisions for the FSIN – Province of Saskatchewan gaming partnership.

The objective of this chapter is to provide an analysis of the negotiations related to those two documents and the key provisions in each document. Toward that end this chapter consists of three major sections. The first section provides an overview of the nature of the negotiations surrounding the development of provisions in the partnership. The second section provides an overview of the key provisions included in the *1995 Framework Agreement*. The third section examines the *1995 Casino Operating Agreement* with special attention to the roles and responsibilities of the two agents of the partnership – Saskatchewan Liquor and Gaming Authority (SLGA) and the Saskatchewan Indian Gaming Authority (SIGA).

3.2 The Nature of Negotiations

The Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan entered into negotiations in 1993 to develop the terms of the partnership arrangement that provided a regulatory, management, and accountability framework for the partnership.¹¹¹ Those negotiations resulted in the signing of the *1995 Framework Agreement (Agreement)*, and of the *1995 Casino Operating Agreement (COA)* eight months later. These negotiations were conducted by representatives of the FSIN and the provincial government, including the FSIN Grand Chief and two FSIN representatives, two provincial senior civil servants, and the provincial minister responsible for the Gaming Commission. This relatively small number of participants at the negotiation table and their interpersonal relations contributed to a climate of trust and respect.¹¹²

The FSIN and provincial representatives involved in the negotiations of the partnership arrangements had shared objectives. The most significant shared objective was to improve Aboriginal economic development that enabled Aboriginal people to achieve their own aspirations of a business venture conducted by Aboriginal people; and to mitigate the contention over gaming sovereignty on-reserve.¹¹³ Despite differing perspectives, such as those that existed regarding on-reserve gaming, the FSIN and the Province recognized that more progress would be made through a cooperative and constructive negotiation process. There were four issues, however, on the negotiating table that complicated the negotiation process, and as a result, a prolonged resolution. This included the issues of jurisdiction, the number and location of First Nations casinos, the revenue distribution formula, and an electronic gaming regulatory framework.

The first issue on the negotiation table for the FSIN and the provincial government representatives was the jurisdictional aspect of gaming. In fact, the discourse on the matter of jurisdiction continues today, as it is a paramount theme that resonates throughout the life cycle of the partnership. At the start of the negotiations, both sides had firmly entrenched viewpoints on the issue of jurisdiction for gaming that caused an impasse in the negotiations. The province's position was, and remains, that gaming is a provincial responsibility pursuant of s.207 (1) of the *Criminal Code*, which specifies that the licensing and management of gaming is the sole responsibility of the province. However, in accordance with the requirements of 207 (1)(b), the province may authorize a charitable organization to conduct and manage gaming provided that the province grants a license, and that the profits are allocated for charitable or religious purposes. In order to comply with the *Criminal Code* s. 207 (1)(b), the *Agreement* classifies the Saskatchewan Indian and Gaming Authority (SIGA) as a charitable organization. This designation provides SIGA with the license to manage and operate table games in the First Nations casinos.

The FSIN position was, and continues to be today, that gaming on reserve is a sovereign right, which is constitutionally protected under s.35 of the *Constitution Act, 1982*. The FSIN views gaming activities as an economic and commercial right under inherent and treaty rights on reserve lands in Saskatchewan.¹¹⁴ Notwithstanding their respective positions on the jurisdictional issue, the FSIN and the Province agreed to disagree on their diverging perspectives and proceeded forward with the negotiations for provisions of the partnership. The jurisdictional provision that was agreed upon is specified in s.2.1 of the *Agreement*, and is as follows:

The Government and the FSIN agree to work together to develop and present to the Government of Canada proposals which would allow First Nations full jurisdiction in relation to all forms of gaming on reserves, either through amendments to the Criminal Code of Canada or new federal legislation.¹¹⁵

By developing the jurisdictional proposal, the FSIN and the Province demonstrated a commitment to mitigate a thorny issue that was in essence unsolvable without provisions for future cooperative measures.

The second issue of the negotiation process was to determine how many First Nations casinos should be developed, and the location of such casinos. During the early stages of negotiations this particular matter was not an issue, as it was agreed that there would be two casinos in the province, one government operated casino in Regina and one First Nations casino in Saskatoon.¹¹⁶ However, in October 1994, the citizens of Saskatoon rejected the proposal of a First Nations casino development in the downtown core of the city, thus dramatically altering the negotiation agenda.

At this point it is useful to explain the process for establishing a First Nations casino. The explanation will illustrate how that process added to the complexity of negotiations, and to the number of provisions in the resulting agreement. Before approval for a casino facility is granted in Saskatchewan, a process of municipal consultation, market evaluations, economic viability, and community impact studies is required.¹¹⁷ If the municipality or municipal council rejects the proposal for casino development, it can be denied. This was the situation in October 1994, when Saskatoon voted on the proposal to build a downtown casino, and it was “rejected by an overwhelming margin of 50,938 to 13,182.”¹¹⁸

Due to the rejection of the proposal, renegotiations commenced between the FSIN and the Province to determine the number of casinos, and to decide upon alternative locations in Saskatchewan. As a result of the completion of municipal approval processes for casino development and then renegotiations, it was agreed that there would be four First Nations casinos to be established in the cities of Prince Albert, North Battleford, Yorkton and on the White Bear Reserve (the Bear Claw Casino).¹¹⁹

Once the decision was made as to the location, design and number of First Nations casinos, the issue was to determine an appropriate, equitable revenue distribution formula. In addition to deciding on how the revenues should be allocated amongst the partners, there were two factors that further complicated deliberations. First, the exhibition associations and various charitable organizations rely upon gaming as their primary means of fundraising; therefore, compensatory considerations were necessary to mitigate possible adverse effects for such associations and organizations from new gaming facilities within the province. Second, it was essential that the Province not exclude the Metis Nation of Saskatchewan with respect to gaming revenues, due to its stated objective to promote the self-reliance of Metis people.¹²⁰ It was therefore important to allocate gaming revenues to provide financial assistance to bolster economic activities for Metis people (similar to First Nations, the Metis Nation also strives to stimulate economic development within their communities). Negotiators had to agree on a revenue sharing formula for profit distribution amongst themselves as partners; and, to agree on the allocation of funds for other charitable organizations and for the Metis Nation in Saskatchewan.

Adding to the complexity of deciding on an appropriate revenue sharing formula was the fact that the gaming trend in Canada was experiencing a major upsurge, which made the prediction of anticipated revenues difficult to determine. Part of the reason for this was that although casinos were operational in Saskatchewan through the exhibition associations, they were not on the same scale or design as the proposed First Nations development.¹²¹ Overall, the revenue sharing formula was something for which achieving consensus was challenging. The revenue formula that was chosen would remain unchanged until 1998, when amendments were instituted due to exceptionally high profit margins.

The fourth matter that complicated the negotiations was the issue of electronic gaming machines. The amount of energy expended on deliberations over this issue diverted attention from the corporate level accountability specifications, to an emphasis on accountability provisions for electronic gaming machines in casino operations. The operational and regulatory aspects of electronic gaming machines are crucial for two reasons.¹²² First, they can “consume up to 80% of the gambling volume” and can generate substantial profits in the industry.¹²³ Second, the *Criminal Code* has a different licensing scheme designation for electronic gaming devices.¹²⁴ In Saskatchewan, for example, the Province owns electronic gaming machines, which adds another control dimension to the management of these activities. The matters of complexity for negotiation and consultations thus became twofold. How many machines should be operational throughout the four casinos so as to maintain equal distribution throughout the province? And second, what provisions are required to manage and operate gaming machines pursuant to s.207 (1)(b) of the *Criminal Code*? The resolution of this issue

involved SIGA's consent to comply with the 'Operating Policies and Directives' established in the *1995 Casino Operating Agreement (COA)*; the limitation of SIGA's authority of slot machines; and to construct an agreement attached to the COA – Appendix Slot Machine Management Agreement.¹²⁵

The negotiations between the Province and the FSIN concluded by each of them agreeing to a structural framework that would resolve the various issues at the table, notably those relating to jurisdiction, revenue sharing, First Nation casino development sites, and electronic gaming considerations. These partnership arrangements would be specified in provisions of the *1995 Framework Agreement*, and are discussed in the following section.

3.3 The 1995 Framework Agreement

The Federation of Saskatchewan Indian Nations (FSIN) – Province of Saskatchewan gaming partnership is a legally binding, long-term, formal partnership, which involves a contractual arrangement to solidify its terms. The contractual arrangement was arrived at after a two-year negotiation process, whereby the provincial minister, Hon. J. Crawford and FSIN Grand Chief B. Favel signed the *1995 Framework Agreement* in February 1995. The key provisions of that agreement deal with the following matters: the duration of the arrangement; the municipal considerations of casino development; the future development of First Nations casinos; the revenue sharing formula; the employment equity; the electronic gaming regulations; the nature of future consultations; and the responsibilities of the partners.

In addition to these particular sets of provisions regarding the contractual arrangement, there are also some provisions regarding the two incorporated bodies – Saskatchewan Liquor and Gaming Authority (SLGA) and Saskatchewan Indian Gaming Authority (SIGA). These two bodies are established pursuant of the *Non-Profit Corporation Act* for the “purposes of entering into the arrangements” and to function as ‘agents’ of the partnership. Before discussing the nature of the provisions in the contractual agreement, it is beneficial to provide an explanation of the nature of these ‘agents’ of the partnership, SIGA and SLGA.

3.3.1 The ‘Agents’ of the Partnership

To perform the operational, regulatory and licensing functions of the gaming activities in Saskatchewan, the partners agreed to appoint SLGA and SIGA as the ‘agents’ of the partnership. The agent on behalf of the Province is the SLGA. It is a Treasury Board Crown Corporation that functions as the regulating body for the six casinos in Saskatchewan.¹²⁶ SLGA is “responsible for the distribution, control and regulation of liquor and gaming” in a manner that promote financial efficacy, and social responsibilities.¹²⁷ SLGA is governed by and operates under the *Alcohol and Gaming Regulations Act* of Saskatchewan. In addition, it administers *The Alcohol Control Regulations* and *The Gaming Licensing Regulations*.

SIGA is a non-profit corporation designated as a charitable organization under the *Non Profits Corporations Act* of Saskatchewan. SIGA is the “proponent on behalf of the FSIN” both on an off reserves, pursuant to the *Agreement*.¹²⁸ “SIGA is not and does not act as an agent SLGA, and shall not enter into any agreement with third parties.”¹²⁹ Instead, it is an incorporated body of the FSIN and is the operational agent of the

partnership with the contractual authority to enter into the *Casino Operating Agreement (COA)* with the SLGA. SIGA's mandate is to "conduct all business, marketing and management functions" of the four First Nations casinos in Saskatchewan.¹³⁰

The Board of Directors for SIGA consisted of eleven members; one member appointed by the FSIN, and the remaining members appointed from each of the ten Tribal Councils.¹³¹ The Board members can have a three-year term, and candidates "should be selected for their actual or potential expertise in the business and management of casinos and VLT sites."¹³² The Chair of the Board is required to report activities of SIGA's operations to Saskatchewan Indian Gaming Commission (SIGC), and is responsible for the overall conduct and management of the meetings. SIGA reports to the Saskatchewan Indian and Gaming Commission (SIGC) on a regular basis as specified in the *Act Respecting First Nations Gaming*.¹³³ In addition to this internal reporting system, SIGA agreed to provide SLGA with casino operation records for auditing purposes on an annual basis, or at a particular time when deemed appropriate by SLGA.

SIGA has been established pursuant to *An Act Respecting First Nations Gaming (Act)* which was enacted by the FSIN. The *Act* provides key provisions regarding SIGA and some other FSIN agencies that are important for the gaming industry. The *Act* was enacted as part of the FSIN's efforts to reorganize its internal structure designed to coordinate its operational, regulatory and licensing responsibilities related to the partnership arrangement pursuant to the *1995 Agreement*. This resulted in the creation of three corporate bodies, the Saskatchewan Indian Gaming Authority (SIGA); the Saskatchewan Indian Gaming Commission (SIGC); and the Saskatchewan Indian Gaming Licensing (SIGL). The roles and responsibilities of these three bodies are

identified in the *1995 Framework Agreement*. However, the *Act* provides a more precise, detailed description of the specific nature of SIGA, SIGC, and SIGL.

The first important agency of the FSIN for gaming is SIGA whose core function is described above. The second agency of the FSIN is SIGC, whose membership is by appointment by the FSIN, in accordance to the *First Nations Convention Act*. The *First Nations Gaming Act* prescribes SIGC's mandate as the 'political management' of all gaming activities that includes the creation and supervision of activities of SIGA, and is "empowered to develop guidelines and regulations for the further definition of any provision of the [First Nations Convention] Act."¹³⁴ Furthermore, SIGC is a "recognized Commission of the Federation with full authority, subject to Treasury Board approval of annual budgets...."¹³⁵ In the governing of operations, SIGC follows the customs and conventions established by the FSIN, in particular, consensus decision-making. In 1996, however, the SIGC was reorganized and as a result, the gaming portfolio was assigned to the Economic Development Commission of the FSIN.

The third body created by FSIN is the corporate licensing entity - SIGL. It is a five-member subcommittee of SIGC, and it provides regular reports to SIGC. Its mandate is to develop fees, protocols, and licensing standards for the "operation and management of charitable lotteries on reserve in Saskatchewan" and for the development of regulations for licensing and operating policies of the casinos.¹³⁶ Like the SIGC, the provisions for SIGL are located in the *Act Respecting First Nations Gaming*, albeit provisions regarding licensing operations are also located in the *Agreement*. SIGL, SIGC and SIGA provide FSIN with the structures necessary to conduct the functions required

for the operations, management, development, and improvement of the First Nations casinos established in Saskatchewan.

In addition to these three agencies established by the *Act Respecting First Nations Gaming*, FSIN established a separate entity known as the First Nations Rehabilitation Fund (FNARF). The FNARF is an agent of FSIN with a mandate to “ensure that effective and accessible prevention and treatment programs are available to First Nations people affected by gaming addictions.”¹³⁷ FNARF will implement its mandate by developing and coordinating partnerships with agencies that will deliver effective programming related to prevention and treatment of gaming addictions.

3.3.2 The Nature of the Provisions in the 1995 Framework

This section describes the fundamental provisions specified for the Province – FSIN gaming partnership. The provisions of the *1995 Framework Agreement* include stipulations regarding the following: the time frame of the agreement, future development considerations, electronic gaming specifications, revenue sharing formula, employment equity provisions, future collaboration expectations, and the terms of partnership relations. These will be briefly described in the order as listed above.

1) Timeframe of the Agreement. The *Agreement* was signed for a five-year term. The time frame was of relative importance given that the partners were embarking on a business venture that was new in terms of the magnitude of gaming activities proposed. Furthermore, the Province was the first government in Canada to develop a partnership in gaming with a First Nations organization;¹³⁸ therefore, an unprecedented partnership in

terms of the framework models available for reference. Considering these two factors, the five-year term was an appropriate time frame for the arrangement.

2) *Future Casino Development.* Because future casino development is an important consideration in the overall long-term economic sustainability of the industry, regulatory provisions were developed to maintain and promote successful investment in First Nations casinos. The Province agreed it would not entertain the proposal for a new casino in a municipality where a First Nations casino is established. This provision provides a right for the preservation or level of integrity of First Nations casinos. However, if the FSIN is to submit a proposal for the establishment of a new casino, it must contain market evaluations, development plans that are appropriate to the local community, and it must be approved by a resolution passed by the municipality council, or on reserve, approval by the First Nation must be granted. Moreover, it is stipulated that for a five-year duration, the Province will only accept a proposal for casino expansion in Saskatoon from the FSIN. Following this five-year period, the Province will consider a third party casino proposal, but will provide FSIN with notification and the “time to prepare and submit a proposal of its own in accordance with this Agreement” and will “give full, fair and equal consideration to both proposals.”¹³⁹ These provisions do offer some measure to safeguard First Nations casinos from market competition or market saturation. However, because the Province through SLGA functions as the regulator and operator of gaming activities, and in part, the competitor, it is conceivable that these provisions are not sufficient protection should the Province adopt expansionary notions.

3) *Electronic Gaming.* Three regulatory provisions for the electronic gaming aspects of the partnership are specified as follows. First, the number of machines in the four First

Nations casinos collectively could not exceed the number of machines in Regina. In other words, there was ceiling placed on the quantity of slot machines for the four casinos, which were 500 machines (this number was equivalent to the number that had initially agreed upon in the 1994 Agreement proposed for the Saskatoon casino expansion project).¹⁴⁰ Second, it was agreed that SLGA “shall have the conduct and management of all Slot machines in the Casinos as required by Section 207 of the *Criminal Code* of Canada.”¹⁴¹ In addition, it was agreed “that the FSIN may propose VLT sites on reserves” providing that specific requirements in accordance to the *Criminal Code* are maintained.¹⁴²

4) Revenue Sharing Formula. The end result of deliberations over the revenue sharing formula was that the *Agreement* contained provisions for both on and off reserve profit distribution, which were as follows:

- on reserve distribution = “50% to the First Nations Trust fund, 25% to the Government, and 25% to be distributed, through the First Nations Trust, for charitable purposes to First Nations”¹⁴³
- off reserve distribution = 50% First Nations, 25% Government and 25% to the Associated Entities Fund.¹⁴⁴
- The distribution of profit was amended in 1998, due to the unanticipated high profits generated. This changed the equation to 37.5% to First Nations and 37.5% to Government and the remaining 25% to the Community Initiatives Fund off reserve, or alternatively, on reserve 25% to the Community Development Corporation.¹⁴⁵

- A revenue sharing agreement was established for the VLT sites on reserve, that entitles the First Nations Trust Fund to 85%, the Province 15% of the gross VLT revenues (less winnings).¹⁴⁶

5. *Employment Equity*. Due to the partners' mutual aim to increase employment within the Aboriginal community, it was important to acknowledge that objective by instituting a provision for "special employment programs" for Aboriginal people in First Nations casino operations.¹⁴⁷ The ramifications for this objective have been largely successful. For instance, as of 1998, the First Nations casinos employed 1,063 people, seventy percent of those employees are Aboriginal people.¹⁴⁸ Moreover, by 2001, SIGA and the Saskatchewan Indian Federated College initiated a joint project aimed at human resource development. This project involves funding and program delivery collaboration, in order to offer a casino management and a gaming administration university program for Aboriginal students.

6) *Future Collaboration Expectations*. The stipulations formulated for the future collaboration arrangements are identified in Part 6 of the *Agreement*. Three noteworthy provisions were agreed upon. First, that further collaboration was needed to implement provisions for the roles and responsibilities of the agents of the partnership and the overall conduct and management of gaming operations. This provision refers to the construction of the *1995 Casino Operating Agreement (COA)*, and it was agreed that operations would not commence until this agreement was created and signed. Second, it was agreed that future collaboration would occur to ensure that the Saskatchewan Indian Gaming Licensing had the applicable terms and conditions required for the issuance of licenses for charitable lotteries on reserves. Third, it was agreed that the partners would

continue to negotiate and work together in ‘good faith’ on the jurisdictional proposals to the federal government. By identifying the expectations of future collaboration between the partners, the management framework is enhanced because future roles and expectations are defined. Furthermore, a benchmark for future assessment is established, which is an important element to the accountability and management framework of a partnership.

7) *Partnership Relations.* Lastly, the sections “Good Faith and Mediation” (Part 7), and “Enforcement and Termination.” (Part 9), stipulate the partnering relations to one another.¹⁴⁹ In Part 7, the partners agree to “consult in good faith to resolve any dispute...”, which will be a function of designated representative from each party for the purposes of consultation.¹⁵⁰ If these representatives are unable to resolve the dispute, the parties agree to mediation through a mutually acceptable mediator. Part 9, “Enforcement and Termination” specified that “the Government’s obligation or ability to prosecute under applicable laws” is not limited if a First Nations casino is established that is not pursuant of the Agreement. Further, it is stipulated that “[e]ither party may terminate this Agreement if the other party defaults in performing or observing any of its obligations under this Agreement, by given written notice of termination to such defaulting party.”¹⁵¹ It is important here to provide protection against possible risks, albeit the commitment to trust, integrity and conflict resolution are also necessary in order to achieve a level of success in the partnership.¹⁵²

Despite the formulation of provisions for the arrangement that were, for the most part, determined by the highly influential elements of the negotiating process, there was an oversight on the specifications of the accountability framework for the partnership.

For instance, there were insufficient provisions that clearly identified the roles and responsibilities of the corporate level of the agent of the partnership, SIGA. This included for instance, its Board structure, communication procedures with SLGA, information management and evaluation, and accountability expectations for corporate business (i.e., sponsorship and travel expenses). In addition to this oversight, there was a lack of criteria related to the accountability aspects for the First Nations Trust Fund.¹⁵³ There were, for example, no provisions to indicate the roles and responsibilities, the definition of the Trustees' accountability relationships, nor of the powers and authorities for the Trustees of the Fund. These inadequate provisions caused an accountability crisis in the partnership in June 2000. The lack of provisions were of concern, particularly given the unprecedented profits generated by the casino operations, and the complexity involved in providing equitable revenue distribution for First Nations bands throughout the province. Nevertheless, the deficiencies in this arrangement would not be realized for approximately five years following the procurement of the partnership's framework agreement which was signed in February 1995. Additionally at the time of signing the agreement, the partners agreed that further consideration was necessary to specify the partners' roles and responsibilities in the operational functions of the First Nations casinos. That agreement resulted in the *1995 Casino Operating Agreement*, which will be discussed in the subsequent section.

3.4 The 1995 Casino Operating Agreement

The 1995 Casino Operating Agreement (COA) is a result of the partners' commitment to devise an operating agreement that refers to the conduct and operations of

the First Nations casinos throughout Saskatchewan. In other words, according to the *Agreement*, further agreements were needed within an eight-month time frame to “ensure that the requirements of section 207 (1)(a) of the *Criminal Code* of Canada are satisfied with respect to the conduct and management of the gaming operations....”¹⁵⁴ In November 1995, Saskatchewan Liquor and Gaming Authority (SLGA) and Saskatchewan Indian Gaming Authority (SIGA) were the signatories of *The 1995 Casino Operating Agreement (COA)*. The *COA* specifies the roles and responsibilities, and the operational and regulatory provisions for SLGA and SIGA – the two designated agents of the Province and the FSIN respectively.

3.4.1 The Nature of Provisions in the 1995 Casino Operating Agreement

The *COA* is a comprehensive and critical document with respect to the regulatory functions of the agents of the partnership, SLGA and SIGA. In general, there are six noteworthy provisions, which are summarized as follows.

1) Control Provisions. There are three provisions pertaining to the limited authority of SIGA that are specified. These provisions are required to ensure that the Province adheres to the requirements of the *Criminal Code*. First, “SLGA shall have the conduct and management of all Slot Machines as required by Section 207 of the *Criminal Code* of Canada.”¹⁵⁵ Second, it is agreed that SLGA has the “exclusive right and authority to establish Operating Policies and Directives”¹⁵⁶; however, consultation with SIGA prior to any amendments shall occur, and if in disagreement, the matter will be submitted to the Mediation Board. Third, SLGA has the “exclusive right to annually determine the Base

Budget”¹⁵⁷ Should SIGA disagree with this base budget, then the matter is submitted to the Mediation Board.

2) *Accountability Provisions.* Among the provisions regarding the accountability aspects of the partnership, there are five notable provisions.

- “SIGA agrees to provide SLGA, or its agents, such access to all Casino sites and records as SLGA shall deem necessary for the active monitoring, supervision and inspection of the operation of Slot Machines... and all Licensed Games...”¹⁵⁸
- SIGA agrees to provide SLGA with a “monthly report of revenues from slot machines” and revenues from Licensed games.¹⁵⁹
- SIGA will supply SLGA with the year’s financial condition in the form of an “independent public accountants” report.¹⁶⁰
- SIGA will appoint an approved auditor for licensed games, but SLGA appoints an auditor for the slot machines.
- The gaming revenues flow from SIGA to SLGA, which will then be allocated to the General Revenue Fund, the First Nations Trust, and the Associated Entities Fund.

Within these provisions, there is no mention, however, of a procedure for follow-up or evaluation of reports. Stipulations of this nature are an essential aspect in the reporting and evaluation mechanisms to ensure that remedies are implemented should problems occur.

3) *Communication Provisions.* A Steering Committee consisting of an equal representation from SLGA and SIGA was established to “facilitate and co-ordinate communication between SLGA and SIGA.” The purpose of the Steering Committee is to discuss and consider issues that may arise from the operations or agreements in relation

to the casinos in the provinces, and representatives will meet “from time to time....”¹⁶¹

Due to the equivocal nature of this provision, SLGA and SIGA are not bound to a regular joint process of evaluation on partnering issues. This absence of open communication is not conducive to promoting awareness or understanding of accountability issues should they arise within the operation and regulation of gaming. Continuity in communication and assessment is therefore an important preventative measure to guard against potential risks in the partnership.

4) Conflict Resolution Provisions. Specifications for mediation include establishing a Mediation Board, the agreement on the process for disputes to the Mediation Board, and the parties agree that “good faith” will be the conduct in the resolution of a dispute.

5) Terms for Default and Termination Provisions. The conditions for default are clearly specified in this section, and protect the partners against possible risk relating to the casino operations. For instance, SLGA has the right to immediately terminate the *Agreement*, if SIGA fails to comply with the “Operating Policies and Directives” stipulated in s.2.5 (which refers to the “requirements, standards, policies and procedures relating to the management and operation of the Slot Machine and essentially related functions and activities of the casinos...”).¹⁶² SIGA, on the other hand, has the right to terminate the *Agreement* after a period of one hundred and eighty days, in the event that SLGA defaults if it does not adhere to “any covenant, agreement or term or provision of this *Agreement*....”¹⁶³ These terms of default are important aspects of the arrangement to specify the consequences for non-compliance in the partnership. The *COA* provides a regulatory framework for the operations of the First Nations casinos, and for the roles and responsibilities of the partners’ agents, SIGA and SLGA.

The *1995 COA* and the *1995 Framework Agreement* provide the provisions necessary to license, develop, regulate, operate and manage First Nations gaming in Saskatchewan. Despite the attempt of the partners to formulate a comprehensive, regulatory agreement, it is not unreasonable to expect that there would be difficulties experienced in the partnership due to the complexity of the arrangement. In addition, two factors contributed to the partnership challenges. First, this is a unique partnership (the first Aboriginal – governmental gaming partnership in Canada), and thus there were no models to draw upon in their negotiations to formulate a framework. Second, the partners encountered challenges due to the unanticipated, exponential growth that the gaming industry in Saskatchewan experienced. For instance, the estimated projected revenues for gaming were \$6.4 million, yet the actual net profit reported for 1998 –1999 was \$17 million from the four First Nations casinos.¹⁶⁴ Given the substantial revenues generated, and the regulatory and operational inexperience of the agents of the partnership, risks or challenges were probable. Sound provisions had to be developed to clarify roles and responsibilities, and to identify the communication, monitoring, reporting, and evaluation measures amongst partners, in order that the partnership provided adequate levels of accountability.

3.5 Conclusion

Intergovernmental partnerships, particularly those that involve differing organizational culture and values, will inevitably face challenges in establishing and implementing accountability framework agreements. The Federation of Saskatchewan Indian Nations (FSIN) – Province of Saskatchewan gaming partnership is no exception to these circumstances. After two years of deliberations, the partners signed two key

documents that ultimately prescribed the accountability and regulatory provisions for the partnership and its two agents, Saskatchewan Liquor and Gaming Authority (SLGA) and Saskatchewan Indian Gaming Authority (SIGA). The partners encountered a number of challenging issues in negotiations that required consensus including jurisdiction, location, size of operation, and revenue distribution, all of which were reflected in the provisions developed in the agreement. Once issues were resolved in negotiations, the key document - *1995 Framework Agreement* - was constructed, followed by the signing of the *Casino Operating Agreement* within an eight-month period.

The agreement included provisions for the partnering arrangement regarding the matters of negotiations noted above. In addition, specifications were constructed for licensing responsibilities, future collaboration and objectives, risk management, and conflict resolution. There were however, oversights that contributed to accountability difficulties in the partnership. For instance, there was a lack of accountability in terms of communication procedures, information analysis, and corporate level accountability requirements. These particular oversights would become apparent in the accountability challenges that surfaced in June 2000 when a consequential problem occurred in the partnership, which was identified in the Provincial Auditor's report as a misappropriation of funds by SIGA. This raises the following questions. What problematic features of the agreement can be attributed to the malfunction of the accountability and management aspects of the partnership? What effect did those problematic features have both on the partnership, and the renegotiations and provisions for the *2002 Framework Agreement*? These questions are the focus of the next chapter.

Chapter 4

The Negotiations For and the Nature of the 2002 Partnership Agreement

4.1 Introduction

In recent years, a preoccupation with the accountability aspects of public enterprise has been at the forefront of the public eye.¹⁶⁵ The accountability performance of the gaming partnership in Saskatchewan is no exception to this scrutiny, and has received a great deal of attention through the media's interpretation and subsequent dissemination of information. Nevertheless, as partners in the gaming industry the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan share an important responsibility to provide an optimum degree of accountability to one another as partners, and to the Aboriginal and non-Aboriginal communities in Saskatchewan. It is essential that the Province and FSIN outline and prepare policies that strive to attain an overall satisfactory level of a clear, well-defined formal and informal accountability framework for the partnership.¹⁶⁶ The development, implementation, and sustainability of credible accountability framework of a partnership is a *process* - a process that requires refinement by recurrent communication, adjustment, and evaluation of the objectives and roles and responsibilities of its partners.

It is, however, a difficult task to design and implement an accountability framework for an intergovernmental partnership, due to the plethora of considerations required in the construction for an appropriate framework. This is particularly the case in the FSIN – Province of Saskatchewan gaming partnership where internal and external considerations contributed to the complexity of the arrangement (as were delineated in Chapter 3). Despite the fact that issues of complexity were resolved in the negotiations of the

1995 Agreement, as the partnership continued, new issues emerged and it was essential to revisit some of the original issues.

In June 2000 challenging new issues surfaced within the corporate accountability framework of the partnership which were highly influential in the deliberations for a new agreement. Renegotiations for a new agreement were based on factors that involved corporate accountability concerns, in addition to the fact that the five-year agreement had elapsed. The key issues that were negotiated in the agreement can therefore be grouped in two categories - issues that arose due to deficiencies in the accountability framework, and issues that required reevaluation due to the evolution of the partnership. In 2002 the negotiations between the FSIN and the Province culminated with the formulation of a twenty-five year partnership agreement. Given the salience of this partnership and the public attention it has received, it is noteworthy that the data and research pertaining to its accountability challenges and resolutions are limited.

The objective of this chapter is to examine the factors that led to the negotiation of the 2002 agreement, the focus and nature of the negotiations, and the content of that agreement. Toward that end, the chapter consists of three sections. The first section examines the two fundamental factors that gave rise to the *2002 Framework Agreement*. The second section examines the key issues that were on the negotiation table. The third section describes the product (*The 2002 Framework Agreement*) that resulted from the negotiations regarding the accountability concerns in the partnership, and other key issues of the negotiations.

4.2 The Factors That Led to the Negotiations for a New Agreement

By the year 2000, the gaming partnership had been operational for five years and generated substantial revenues throughout this period. For instance, in the fiscal year 1998/1999, the net profits from the four First Nations casinos was \$17 million, which resulted in the allocation of \$6.4 million to the General Revenue Fund (Province), \$6.4 million to the First Nations Fund, and \$4.2 million to the Associated Entities Fund.¹⁶⁷ The partnership was achieving unprecedented levels of success in terms of revenues generated, yet critical difficulties developed within its corporate accountability controls in June 2000. These accountability concerns surfaced concurrently with the expiration of the five-year 1995 Framework Agreement. The expiry of that agreement and the accountability concerns are the two major contributing factors that led to negotiations for a new agreement, namely the problems with the interim agreement, and the need to examine the corporate accountability concerns.

4.2.1 The 1995 Agreement Expired

As was discussed in Chapter 3, the partnership involves a contractual, legally binding, and formal arrangement as endorsement for First Nations casinos operations in the province. When the *1995 Framework Agreement* terminated, the partners agreed to sign an *Amending Agreement* to extend the terms of the partnership. This interim agreement was signed between the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan in March 2000, and was in effect until December 31, 2000. The *Amending Agreement* stipulated five noteworthy provisions that provided direction for the new

agreement formulated in 2002, while maintaining the legal and regulatory aspects of the partnership until a new agreement was reached.

During the negotiations, it was agreed to establish, in addition to the Saskatchewan Indian Gaming Licensing Authority (SIGA), other licensing authorities. These authorities are referred to as “Gaming Licensing Authorities” and are corporations under *The Non-profit Corporations Act* of Saskatchewan. Their purpose is to “monitor and enforce compliance with the terms and conditions of licenses issued by it...”¹⁶⁸ The *Amending Agreement* stated that:

- Provisions related to the Community Development Corporation (CDC) are specified and, are in fact, restated in the *2002 Framework Agreement*. The CDC is the operating body established to distribute the 25percent of net profit share for the on reserve casinos pursuant to the 1995 Agreement. Its corporate structure, mandate, reporting procedures, and communication protocols are established in this *Amending Agreement*.
- It was agreed to provide a second five-year period whereby the Province would not entertain any other proposal for Saskatoon casino development other than from the FSIN.
- The Amendment was to be in effect until December 31, 2000 and that “the parties agree they will use their best efforts to negotiate in good faith in an attempt to reach an agreement upon a new Framework Agreement prior to December 21, 2000.”¹⁶⁹

Regardless of the fact that this interim agreement provided a temporary contractual arrangement for the partnership until deliberations for a new one were completed, unanticipated challenges emerged in the partnership in June 2000 that would negate the

realization of a new agreement by December 2000 as had been stipulated in the interim agreement.

4.2.2 Corporate Accountability Factors

These accountability factors would prove to be highly influential in the deliberations for a new agreement, as well as on the provisions of that agreement. There was one significant allegation of misappropriation of funds by the CEO at Saskatchewan Indian Gaming Authority (SIGA), which was of particular significance because its implications caused the suspension of negotiations, and it necessitated a detailed reevaluation for the partnership arrangement. Additional accountability concerns that were influential, but to a lesser extent than that of the SIGA Board unauthorized spending, were allegations that SIGA was providing sponsorships to the New Democrat Party (NDP), and matters related to accountability in the First Nations Trust Fund. To provide a foundation on which to examine how these allegations of misappropriation of funds affected the issues of negotiation, and thus the *2002 Framework Agreement*, it is imperative to examine (i) the nature of accusations, (ii) the Province's response (including the directives issued), (iii) the FSIN response to the circumstances, and (iv) SIGA's responses to the directives.

(i) The nature of the accountability factors.

In June of 2000, during the preliminary stages of the annual audit for SIGA, an external auditing firm (KPMG) identified questionable expenditure issues. These expenditures consisted of \$360,000 in personal unauthorized debit and credit card expenditures by the CEO of SIGA. Compounding this issue was the fact that the SIGA Board authorized a "retroactive salary increase to repay SIGA for these personal

expenses.”¹⁷⁰ Once these discrepancies in the SIGA audit were discovered in preliminary stage for the fall audit, KPMG immediately contacted the Provincial Auditor, who notified Saskatchewan Liquor and Gaming Authority (SLGA). Considering these discrepancies, SLGA requested interviews with FSIN to confirm that information.¹⁷¹ Subsequently, the Province immediately assembled an auditing team comprised of “a team of fully competent auditors working in coordination and co-operation with our the Provincial Auditor.”¹⁷² The findings of the team of auditors, specifically the Provincial Auditor’s 2000 Fall Report revealed the “following improper or questionable use of public money:”

- 8no support for payments with the result that we do not know what goods and services SIGA received and whether the payments were for the operation of the slot machines;
- 8unauthorized salary advances;
- 8travel and accommodation expenses that were not reasonable;
- 8contracts that were in excess of fair market value; and
- 8contracts of indeterminable or questionable value.¹⁷³

Due to these audit evaluations, an expeditious set of actions were called for by the official opposition, the media and the public.

Aggravating the accountability concerns, were other accusations that surfaced simultaneously. In addition to the corporate accountability allegations at SIGA involving the CEO and the SIGA Board, there were two additional accountability concerns raised. First, the NDP were under scrutiny by the government opposition and media for receiving sponsorship monies from SIGA. The issue here was with respect to the \$8,000 of sponsorship donations directed to the NDP; and the \$5,000 in donations received by the Liberal Party, donations which were generated from SIGA over the course of three years.¹⁷⁴ The NDP paid back the sponsorship monies in full to SIGA by June 2001, but the Liberals did not.¹⁷⁵ According to the Provincial Auditor’s report, there was a lack of promotion and

sponsorship policy and procedures, which are required to ensure that expenditures are legitimate. In other words, the regulatory provisions in the agreement were not sufficient to produce a credible level of accountability either for business or for sponsorship expenditures. Ultimately this oversight would give rise to further deliberations and specifications for a new agreement.

Lastly, regarding the First Nations Trust Fund, accountability concerns were raised by the official opposition and documented in the Provincial Auditor's Fall 2000 Report. In addition, the Provincial Auditor requested access to the private auditor's (KPMG) files, but in response the Trustees of the Fund refused to allow the files to be released. A lack of clarity with respect to jurisdictional authority contributed to these difficulties within the partnership arrangement. The designated authority of the fund is complicated because it was the responsibility of the Department of Intergovernmental and Aboriginal Affairs to supervise the Trustees of the Fund. Consequently, the reporting and jurisdiction travels beyond the boundaries of the partnership.¹⁷⁶ Moreover, the FSIN and Provincial Auditor have divergent perspectives regarding whether the First Nations Trust Fund is 'public money.' According to the FSIN Grand Chief Bellegarde, the accountability mechanisms and auditing processes are within the authority of FSIN, and thus they are "answerable to government as well as their own citizens for all monies received at the First Nations level."¹⁷⁷ In contrast, the Provincial Auditor claims that the Fund is public money therefore it has a 'duty' to fulfill, a duty that includes mechanisms of *public* disclosure.¹⁷⁸ These partnership challenges occurred due to a lack of clarity over jurisdictional authority or responsibility for the First Nations Fund. The accountability concerns for the Fund would

be addressed in the re-negotiations for the new agreement, with an emphasis on provisions for the First Nations Trust (the Fund is transformed to the Trust in the 2002 Agreement).

In addition to adding issues to the negotiations for a new agreement, the accountability matters engendered adverse consequences for the partners, especially for SIGA, the FSIN agent of the partnership. For example, the unauthorized expenditures at the corporate level of SIGA elicited damaging media coverage and condemning remarks from opposition parties in the legislature. Consequently, the public questioned the Province's ability to manage gaming in the province within a credible, transparent accountability framework. According to opposition member Ms. Eagles, "this scandal has shaken the confidence of Saskatchewan people. It has shaken the confidence people have in SIGA."¹⁷⁹ Adding to the adverse consequences for SIGA, was the fact that the Province suspended negotiations on the new agreement, the stability of the partnership was jeopardized, and SIGA's negotiations for a managerial contract with two Manitoba casinos were dropped.¹⁸⁰ The negotiations resumed and the stability of the partnership was strengthened with SIGA's commitment to comply with the directives that were instituted. However, faith in the accountability framework has been shaken, and it required considerable efforts to restore it.

(ii) The Province's responses to accountability factors

In response to the allegations of misappropriation of SIGA funds, the Minister Responsible for the Saskatchewan Liquor and Gaming Authority, the Honourable Ms. Hamilton, instituted four fundamental conditions through SLGA. First, she called for a suspension on the negotiations for a new agreement, which would remain suspended until July 2001 when SIGA successfully met eight benchmarks that were issued. Second, as

noted earlier, an auditing team was assembled to investigate the allegations at SIGA. The matter was also submitted to the Department of Justice for criminal investigation.¹⁸¹ Third, approval was cancelled for the proposed SIGA participation as management consultants for Manitoba First Nations casinos.¹⁸² Fourth, the Minister issued two sets of directives to SIGA, through its agent, SLGA. The initial one was issued in June 2000, and the second in November 2000. The five directives issued to SIGA's Board of Directors on June 16, 2000 are as follows:

- remove the CEO from his position;
- rescind the Board's resolution dated May 25, 2000 regarding the increase in the CEO's salary and extension of his term of office;
- appoint a new chair for the Board, who could not hold the position of CEO;
- confirm that debit and credit cards issued to executive staff were cancelled; and
- provide a copy of the policy governing the use of credit and debit cards for Liquor and Gaming approval.¹⁸³

The second set of directives was issued in November 2000 by SLGA to SIGA, is referred to as the 'Benchmarks' for SIGA, and is based upon the Provincial Auditor's recommendations. They are summarized as follows:

- 1) The Provincial Auditor's office is to have full access to, and the conduct of, SIGA audits. SIGA is required to publish a public annual report, which should also contain a business and financial plan.
- 2) The unauthorized expenses at SIGA are to be recovered by monthly installment payments until the monies are repaid in full. The Provincial Auditor has estimated these unreasonable expenses to be at least \$811,906, which is a result of illegitimate expenditures by the CEO of SIGA.¹⁸⁴
- 3) SIGA must adopt new policies for the board pertaining to its structure, conflict of interest, codes of conduct, remuneration, expense accounting, guidelines and limits for

travel expenditures, and delegation of authority (these stipulations pertain to management as well). In addition, the corporate members at SIGA are required to document and communicate their objectives to management and SLGA.

- 4) Financial plans, management reporting and communication processes must be developed for regular reporting amongst the Board and management at SIGA.
- 5) Appropriate written procedure and standards are required for contracts awarded, business operations/expenses, management expenses, marketing, promotional and sponsorship activities.¹⁸⁵

In addition to recommendations to improve SIGA's accountability, the Provincial Auditor also made recommendations for SLGA to make changes in its operations. Noteworthy recommendations include the specifications for: scheduled monthly meetings between the SIGA Board and SLGA, improved training/education for SLGA employees, and SIGA's casino operating policies and budgets must be received, assessed and approved "on a timely basis."¹⁸⁶ The problematic features of *1995 Framework* therefore involved a lack of corporate accountability provisions. For instance, the processes of communication and information management at the SLGA level were inadequate in terms of its evaluation, timeliness and responses to the reports generated by SIGA. Factors that may have contributed to the shortfall in the information analysis and communication specifications are the lack of partnership experience at SLGA and SIGA, and an underestimation of the time required to tend to the communication and evaluation aspects of the partnership.

The questionable probity for gaming revenues placed the provincial minister responsible for gaming in a precarious position.¹⁸⁷ There was enormous pressure from the official opposition and the public to address the circumstances involving the allegations of

misappropriation of funds SIGA, the sponsorship monies to the NDP, and the responsibility concerns of the First Nations Fund. Moreover, the Minister was responsible for responding to the “statutory obligation and legal requirement to regulate gaming in this province.”¹⁸⁸

Meanwhile, the gaming industry provides employment for approximately 1,100 people, seventy percent of which are Aboriginal; thus jeopardizing the industry by closure of the First Nations casinos would be devastating for the employees of those casinos. Given the legal and socio-economic implications of the situation, the decision concerning what appropriate measures were necessary were neither clear nor easy to implement.

In a public announcement, the Minister threatened to close the gaming operations, and to remove the CEO of SIGA. These sanctions ordered were not necessarily pursuant to the dispute resolution process specified in Part 7 in the *1995 Framework Agreement*, as the *Agreement* specifies that “the Government and the FSIN shall consult in good faith to resolve any dispute that may arise involving the interpretation or application of this Agreement.”¹⁸⁹ Moreover, as prescribed in the *Agreement*, the parties may terminate the *Agreement* “by giving written notice of termination to such defaulting party.”¹⁹⁰ This procedure was not followed by the Minister, which contributed to unstable partnership relations during the controversial crisis. It is conceivable that careful consideration of the provisions of the agreement, clear communication, and immediate negotiation may have served to alleviate the high tensions that accompanied the situation. The public threats merely exacerbated the tensions.

Stable relations in partnering are very important. However, given the importance of the accountability issue, remedy for the circumstances was urgently required. What level of responsibility and liability would the FSIN have taken if the Minister had not insisted upon

the resignation of the CEO of SIGA? Would the issue have been dealt with more effectively if partnering relations were conducted with greater respect for their respective authority and jurisdiction? As a result of the challenges to partnership relations, the dispute resolution was an issue on the 2002 negotiating agenda, and is reflected in the 2002 Agreement. In fact, the *2002 Agreement* contains eight new provisions that specify the expectations, objectives and roles of the partners in the mediation and conflict resolution process.

(iii) FSIN responses to accountability factors

The FSIN Grand Chief Perry Bellegarde expressed concern over the threat issued by the Minister (Hon. Ms Hamilton) when she stated she had the ability to “pull the plug on Native-run casinos” if the CEO was not removed at SIGA.¹⁹¹ Initially, Bellegarde repudiated Hamilton’s request for the removal of the CEO and stated he would remain in the position with the salary increase that had been approved by FSIN.¹⁹² Bellegarde was reported to state that Hamilton’s directive to remove the CEO of SIGA and the suspension of casino expansion without FSIN negotiation was an indication of lack of respect for FSIN jurisdiction.¹⁹³ Bellegarde also asserted that the media, the Saskatchewan Party and the provincial government were attempting to “discredit the Indian gaming industry” in a “political witch hunt.”¹⁹⁴ Moreover, he expressed dissatisfaction with the process of dispute resolution by stating that the FSIN was “very upset with the heavy handedness of the government” and called for “mutual respect” within the partnership.¹⁹⁵

Despite the atmosphere of contention between partners, Bellegarde recognized the serious implications of non-compliance for Aboriginal people in the gaming industry, and chose to move forward towards resolution. For example, in a news conference, Bellegarde announced that the FSIN “through [the] economic and community development commission,

to which our SIGA board reports, fully accepted and supported the decision from the SIGA board to terminate the CEO, Dutch Lerat.”¹⁹⁶ Bellegarde also declared that the problems with the CEO occurred because there was “too much power and control in one individual. It was abuse.”¹⁹⁷ The decision to remove the CEO of SIGA was also strongly supported by other Chiefs in the FSIN. For instance, the nine Chiefs of the Meadow Lake Tribal Council appealed for the replacement of the entire Board at SIGA, as well as for the firing of the finance minister for SIGA.¹⁹⁸

During the difficulties in 2000, Chief Bellegarde also identified a complex feature of the partnership that contributed to some of its challenges. That is to say, in the partnership arrangement the Province is a partner, a competitor (Casino Regina and Moose Jaw Casino), and a regulator in the gaming industry.¹⁹⁹ Because the Province has these three roles in the partnership, the regulatory authority or jurisdictional responsibilities may be problematic. Despite these obvious problems of multiple roles, there was little that could be done to produce a radically different regulatory or partnering framework. The partners were constrained to make the best of the situation.

(iv) SIGA’s Responses to Accountability Factors

SIGA complied promptly and efficiently with the directives issued in June and November 2000. An interim CEO was appointed to replace SIGA’s CEO. The Board structure was changed, as the board position of chairman and CEO were separated; and the number of board members decreased from eleven to seven, three of which are SLGA nominees, and four FSIN nominees.²⁰⁰ In fact, by March 2001, SIGA had successfully implemented eight of the benchmarks from the November 2000 directives issued by SLGA. For instance, SIGA’s demonstrated significant progress in executing accountability measures

for policies, procedures, communication, reporting, and training. Moreover, SIGA formulated its own *Policy & Procedure Manual* that provides comprehensive specifications for its code of conduct, fiduciary duties, director responsibilities, ethical, administrative, and compliance guidelines.²⁰¹ The improved level of professionalism of SIGA is, for example, reflected in the advancements made in its publication of annual reports. By attaining significant progress on the benchmarks instituted by SLGA, SIGA demonstrated its commitment to improve its level of professionalism and corporate accountability. Consequently, negotiations on a new agreement commenced in July 2001.

Throughout the partnership's difficulties, it became apparent that the *1995 Framework Agreement* was deficient in accountability provisions at the corporate level of SIGA, and in communications and assessment within the partnership. The accountability provisions were insufficient in the specifications for SIGA's corporate structure that includes, for example, conflict of interest and code of conduct provisions, and business procedures and policies. Shortfalls arose in terms of the information management and evaluation that the SLGA was responsible for, which can partially be attributed to inadequate communication procedures and lack of education and managerial skill levels. To reduce these shortfalls in accountability frameworks, changes must be adopted and implemented. For instance, improved skills and knowledge are needed to adapt to the partnership approach that uses information sharing, joint planning, joint communication, and different monitoring, assessment and adjustment processes.²⁰² These aspects of communication and evaluation are interconnected in a partnership arrangement, and should be recognized as such. If communication and evaluation protocols are lacking, for example, the partners may not take the opportunity to present, discuss and act jointly upon the evaluations or analysis of reports.

To facilitate success in a partnership, it is important that the evaluation, decision-making and adjustment processes are of joint responsibility.²⁰³ When these processes are managed jointly, improvements and adjustments can be implemented in a timely and effective basis, should difficulties arise in accountability measurements.

In addition, to the accountability issues of the arrangement, there were problems both with the identification of the partners' precise responsibilities, and with the dispute resolution procedures for the partnership. Jurisdictional issues of authority and responsibility amongst the partners were not clearly specified in the agreement. This became apparent when the partners attempted to resolve the contentious issue of the misappropriation of funds at SIGA. When the investigation into the financial allegations was made, the issue was raised - who was responsible for the probity of financial management of gaming revenues? As a result, of ambiguity, partnering relations were temporarily strained and unstable.

Fortunately, the FSIN and the Province were cognizant of the substantial socio-economic loss if the First Nations casinos were closed, and they maintained their commitment to the partnership. Despite the inadequacies of the agreement, the partnership was able to move forward in the face of a crisis that temporarily threatened its stability. The partners implemented adjustments and reevaluated the issues that would sustain the partnership until a new agreement could be reached. The next section will focus on the key issues that influenced the nature of the 2002 partnership arrangement.

4.3 Key Issues Negotiated for the 2002 Agreement

In July 2001, negotiations commenced between the Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan to develop a new agreement for the

gaming partnership. The negotiations had been suspended until SIGA successfully met eight of the November 2000 Directives.²⁰⁴ The atmosphere of this set of negotiations was one of optimism by the partners. For example, the Honourable Mr. Ron Osika, the new Minister of Liquor and Gaming, asserted that “we are negotiating in good faith....and we will have a good agreement with our partners and our friends.”²⁰⁵ Despite the fact that the partnership and negotiations are based on ‘mutual respect,’ it is important to keep in mind the Province yields a higher degree of power than the FSIN (which is not an uncommon phenomenon in intergovernmental partnerships).²⁰⁶

In summary, the three key issues that were deliberated on for the *2002 Framework Agreement* are the result of the accountability factors that challenged the partnership in June 2000. These are corporate accountability issues, jurisdictional issues, and dispute resolution/mediation issues. In addition to these key issues on the negotiating table, there were issues that had been deliberated on in the *1995 Framework Agreement*, but required further consideration due to the evolution the partnership. These issues included the negotiation of the time commitment to the partnership, the revenue sharing formula, and casino expansion issues.

The objective of this section of the chapter is to examine the key issues of negotiation and the resulting provisions within the 2002 partnership arrangement. Accordingly, it consists of two subsections. The first examines the key issues that emerged in the year 2000 as a result of the accountability challenges of the partnership; and the second explores the issues that were reevaluated as a result of the progression of the partnership.

4.3.1 Key issues that Emerged in 2000 due to Accountability Challenges

The first key issue in negotiations was to agree on accountability provisions that improved the mechanisms for the “Operating Policies and Directives” and corporate regulatory provisions. It became apparent through partnership challenges that there were inadequacies that required attention. These related to auditing procedures, SIGA board structure, communication, and evaluation processes.²⁰⁷ The 2000 Directives, mandated by the Province (SLGA) to SIGA in November 2000, addressed the inadequacies of the accountability mechanisms, and specified corrective policies accordingly. These Directives are recapitulated in the *2002 Casino Operating Agreement*, and will be discussed in further detail in a later section of this chapter.

The second key issue on the negotiating agenda refers to the jurisdictional aspects of the partnership. As was mentioned in previous sections, problematic situations emerged in the partnership due to the ambiguity of jurisdiction as it relates to authority issues and First Nations inherent rights. The issues to discuss were therefore, threefold. First, what provisions could be formulated to increase the capacity building aspect of SIGA as an agent of the partnership? Second, what specifications are needed to address the responsibility and accountability requirements for the First Nations Trust Fund? Lastly, what regulations are required to successfully manage the Community Development Corporations, which are responsible for the allocation of the twenty-five percent of net profits for on reserve casinos?

The discussions on jurisdictional issues regarding the First Nations inherent rights were a ‘key’ issue for the FSIN. For instance, Grand Chief Bellegarde stated that “we have to go arm and arm with the province to look at options for jurisdiction to respect and reflect our First Nations jurisdiction in our territories.”²⁰⁸ The jurisdictional issue of inherent right of

gaming on reserve was a controversial matter prior to the creation of the gaming partnership, and in fact it was a fundamental catalyst for the genesis of the partnership. However, the issue was not completely resolved within the specified provisions of the *1995 Framework Agreement*. Deliberations were therefore focused on resolving the matter, and are seemingly settled with the ratification of the *2002 Framework Agreement*.

The third key issue of negotiations pertains to the dispute resolution and mediation process. As the stability of the partnership was shaken in 2000, there is no doubt that the partners would have benefited from clearly specified mediation processes and responsibilities, and compliance to the stipulations. The partners therefore needed to deliberate on acceptable terms for mediation and resolution policies and responsibilities. In so doing, the partners developed an important structure that helps to identify potential risks for future relations as partners.

4.3.2 Issues that were Reevaluated due to Evolution of the Partnership

Because the gaming partnership, like other partnerships, evolved over time and adjusted to its challenges, issues that were initially agreed upon required reevaluation. The next section will therefore identify the three key issues in negotiations that necessitated further consideration.

The first key issue emerged because the agreement had expired in 2000, it was necessary that the partners establish a new time commitment for the gaming partnership. The Province and FSIN shared the notion that a long-term commitment provides a “predictable stable framework”²⁰⁹ and “long term sustainability for the whole gaming industry in the province.”²¹⁰ However, the official opposition raised concerns about the duration of the

partnership commitment. For instance, leader of the opposition, Mr. Hermanson, stated “[a] weak leader would sign a 25-year agreement rather than putting forward an agreement of a reasonable length of time that demands that things be done right so that they can be successfully renewed.”²¹¹ Notwithstanding, Mr. Hermanson’s position, research on partnerships indicate that long-term commitment is required in many partnerships, particularly those with objectives to implement solutions for socio-economic challenges such as unemployment and poverty.²¹²

The second key issue of negotiations for the 2002-partnership arrangement deals with the revenue sharing formula. Deliberations for a revenue sharing formula may have been tense, as “revenue sharing is always going to be a sore spot for everybody.”²¹³ The revenue sharing formula had been amended in 1998, due to the unanticipated high level of revenues generated, yet further considerations were needed to address additional funding allocations for capacity building elements, and for social obligations related to gaming.²¹⁴ Related to capacity building, for example, decisions were required to determine the amounts to be allocated for (1) budget requirements for a fiscal year at Saskatchewan Indian Gaming and Licensing operations, and (2) costs associated with the jurisdictional proposal to be presented to the federal government. Moreover, it was necessary to determine the allocation of funding for the social responsibilities of gaming - the First Nations Additions and Rehabilitation Foundation (FNARF).

The third issue on the negotiation agenda was to agree upon a plan for casino expansion. The issue of casino expansion was on the agenda for deliberations of the 1995 partnering arrangement, but required reevaluation for the 2002 negotiations, as casino expansion in Saskatoon was an important component in the development strategy for the

FSIN. Consequently, the negotiations focused on what provisions were required to protect the partners' interests. As discussed in a previous chapter, the issue of casino expansion was related to the issue of the appropriate number of electronic gaming machines in the First Nations casinos. The next section will discuss the nature of provisions stipulated in the 2002 partnership arrangement.

4.4 The Nature of the Resulting Agreement

The Federation of Saskatchewan Indian Nations (FSIN) and the Province of Saskatchewan signed the 2002 Framework Agreement on June 11, 2002. Additionally on that day, the two agents of the partnership, Saskatchewan Liquor and Gaming Authority (SLGA) and Saskatchewan Indian Gaming Authority (SIGA) signed the *2002 Casino Operating Agreement*. The remainder of this section provides an overview of both the *2002 Framework Agreement* and the *2002 Casino Operating Agreement*.

4.4.1 The 2002 Framework Agreement

The provisions instituted in the new *2002 Agreement* were a reflection of the key issues of the negotiations between the FSIN and the Province. As a result of the negotiation process, there were the existing 1995 provisions that had been expanded upon to meet the requirements of the negotiation agenda. The five expanded provisions are in relation to jurisdictional issues, regulatory issues of casino operations, revenue sharing formula provisions, licensing regulations, and dispute resolution processes. The first part of this section will identify the five provisions. Additionally, there are three newly constructed provisions that were formulated for the 2002 agreement. These involve provisions that stipulate the term of the agreement, the specifications for the 'survival of provisions' and

provisions for the Community Development Corporation and the First Nations Trust. These three new provisions will be briefly discussed in the second subsection.

1) *Jurisdiction.* The key provision from the *1995 Agreement* relating to jurisdiction remains as is specified in Part 2.1. The *1995 Agreement* stipulated that a committee consisting of FSIN and Provincial representatives will be established with the objective to develop discussion papers, proposals and strategies “for taking forward the proposals to the Government of Canada....”²¹⁵ In addition, it stipulates that the Parties “shall work together to further build the capacity of SIGL....”²¹⁶ The partners’ willingness to collaborate on areas of enhanced capacity building are demonstrative of level of partnership commitment, and of the evolutionary process involved in the life cycle of a partnership (devolution of control).

2) *Casino Operations.* The ceiling that was placed on the electronic gaming machines is raised to 1,120 from the 500 that was stipulated in the *1995 Agreement*. Regulating the number of electronic gaming machines is an important aspect of the regulatory functions of SLGA, as a balance in the gaming industry must be maintained to ensure long-term sustainability in the industry. This section of the agreement also stipulates the procedures involved for a new proposal for the Saskatoon market. There is also a provision that provides a three year extension, whereby the Province will not entertain any other proposal for casino development in Saskatoon except that of the FSIN.

3) *Revenue Sharing.* The annual net profit distribution remains unchanged from the amendment of 1998, which specifies that 37.5percent is to the General Revenue Fund, 37.5percent to the First Nations Trust, and 25percent to the Community Development Fund (on reserve) and 25percent to the Community Initiatives Fund (off reserve). The new provisions for revenue sharing stipulate the distribution of net profits to the FNARF for the

sum of \$1.5 million, and \$250,000 on an annual basis for five fiscal years allocated for costs associated with the jurisdictional proposal to the federal government, and \$725,000 is to be allocated to SIGL for the fiscal year 2001/02 with \$875,000 for the operating budget for the fiscal year 2002/03.²¹⁷ In reference to the VLT sites established on reserve, the distribution is as follows:

- a) 15% to the Government,
- b) 15% to the site operator
- c) 15% to the First Nations where the VLT site is located; and
- d) 55% to the First Nations Trust²¹⁸

4) *Licensing Regulations.* The expanded provisions for the licensing authority to identify the capacity building processes and regulatory agreements necessary for the designation of a Gaming Licensing Authority, specifically Saskatchewan Indian Gaming Licensing (SIGL).²¹⁹ These provisions are building the foundations for an increased role for SIGL, which is an important step towards a higher degree of First Nations involvement in the regulatory aspect of gaming.

5) *Dispute Resolution Process.* Provisions are formulated for a mediation process related to dispute resolution. These provisions include:

- that an independent assigned mediator shall conduct the process;
- that there are stipulations for appropriate roles of conduct and levels of responsibilities for the parties;
- that if the mediator does not achieve resolution with the parties, then specifications for judicial expectations are to be implemented; and
- that “[p]arties will conduct themselves at all times in the utmost good faith in attempting to resolve any outstanding dispute.”²²⁰

4.4.2 Newly Formulated Provisions of the 2002 Framework Agreement

1) The Term of the Agreement. The term is a twenty-five year term, with review periods of every five years. Amendments may be implemented providing it is a mutually acceptable agreement, and that it is in written form and ratified.

2) Survival of Agreement. In the event that the jurisdictional authority to control First Nations casinos is recognized by the federal government and if the agreement is therefore terminated, provisions were formulated to address the outcome of that decision. The provisions that “shall survive the expiration or termination of this Agreement” include the following:

- the revenue sharing (section 4.1),
- the First Nations Trust indenture (Part 6),
- the provisions relating to the Community Development Corporation,
- the dispute resolution process, and
- the provision that stipulates the Province will not “provide loans or guarantees... and will not be responsible for any losses incurred through casinos or VLT sites established.”²²¹

These provisions require the FSIN and the Province to ensure that the revenue sharing formula and its distribution through the CDC and Trust will be maintained.

3) Community Development Corporation (CDC)

The function of the CDC is to “make distributions on a fair and equitable basis amongst First Nations charities and non- First Nations charities in the communities in which each is located and in the surrounding areas, in the manner solely determined by the Board of Directors of each Community Development Corporation.”²²² The four CDCs are incorporated as charitable organizations pursuant to the *Non-profit Corporations Act*, and are established by

the Tribal Council at each First Nations casino. The CDC obtains twenty-five percent of the annual net profits of the on reserve casinos, and allocates funding in accordance to its specified mandate. These revenues are to be distributed for initiatives that improve the socio-economic, justice, education, and health issues in Aboriginal communities; and for the cultural development, community infrastructure development, and recreational, senior and youth programming. The specifications for the CDC board structure, the communication processes within the organization and with the Province, and the auditing requirements are included in the provisions.

4) *First Nations Trust.* Part 6 of the agreement was created to address the accountability concerns of the First Nations Fund. Because the Fund is responsible for the allocation of the 37.5 percent of the net revenues of gaming, it is crucial to have specific provisions to ensure that there are appropriate accountability measures for the Fund. These provisions in part, speak to the ambiguity of jurisdictional authority problems that surfaced in June 2000. The lines of responsibility and authority were not clearly delineated for the Fund. Moreover, there were no provisions to identify roles, responsibilities or accountability specifications for the Fund. The problem can be partially attributed to the fact that the Trustees reported to Department of Intergovernmental and Aboriginal Affairs. However, with the provisions in the *2002 Framework Agreement*, the First Nations Fund is dissolved and revenues will flow to the First Nations Trust. In addition, Appendix “A” was constructed to further augment the accountability framework for the First Nations Trust.

An agreement was developed (Appendix “A”), in order to formulate a framework to address the requirements both for the Trustees and for the First Nations Trust. The provisions of the Appendix “A” specify the following:

- The purpose of the Trust, which is “to effect the distribution of the monies due to First Nations from, inter alia, the profits SIGA casinos and SGC casinos.”²²³
- The revenue distribution purposes for the fund (ie. social programs, justice initiatives, cultural and spiritual development, etc.).
- The roles and responsibilities of the Trustees. These provisions include the identification of the Trustees’ power, authority and conflict of interest guidelines; and the training and communication requirements for Trustees. Moreover, financial accountability procedures for the Trustees are clearly specified.
- The accountability requirements for the Trust include: the appointment of an independent auditor, preparation of financial statements “in accordance with generally accepted accountability principles” and the preparation of an annual report that is to be submitted to the FSIN and to SLGA or the Province.²²⁴

The four new provisions in the agreement resulted largely due to the accountability challenges that emerged in 2000, and the negotiations that followed. Subsequently, provisions were formulated for the First Nations Trustees and the Trust, the Community Development Corporation, the guidelines for ‘surviving’ provisions should the FSIN obtain gaming jurisdiction, and the time frame of the agreement. Ultimately, time and whether the partners comply with the accountability framework will be the determinant of success for the newly formulated accountability framework.

4.5 The 2002 Casino Operating Agreement.

The *2002 Casino Operating Agreement* (COA) provides the comprehensive regulatory provisions for the agents of the partnership, SLGA and SIGA. Similar to the *2002*

Framework Agreement, the newly developed provisions of the COA are, in large part, due to the deliberations on key issues of negotiation process. In comparison to the 1995 agreement, the 2002 COA provides a more precise, in-depth framework with respect to the reporting mechanisms, budgeting requirements, and capacity building aspects of the partnership. The purpose of this section is to provide an overview of seven provisions that were constructed for the regulatory aspects of the partnership's framework.

1) *Operating Policies and Directives*. In this section of the COA, the objective was to strengthen the corporate accountability framework at SIGA. As a result, the 'November 2000 Directives' are recapitulated as a provision in Article 6. Additionally, it is stipulated that SIGA must achieve 'Compliance' (refers to 2000 Directives) by August 15, 2005, if not, "it will constitute a SIGA Event of Default."²²⁵ When SIGA is able to meet all of the 2000 Directives for two consecutive years, SLGA will remove (i) the stipulation of the Provincial Auditor as SIGA's external auditor, and (ii) allow for a change in the structure of SIGA Board of Directors.²²⁶ It is further specified that SLGA will supply SIGA with "regular written evaluations of the status of SIGA's Compliance and Sustained Progress."²²⁷ SIGA will confront major challenges to comply successfully with these new directives. Nevertheless, to date the organization has attained progress that has been difficult, and is meeting the challenges with a greater degree of professionalism.

2) *Annual Budget*. This portion of the agreement is specific, as it provides detailed expectations and guidelines in reference to the submission of budget, the consultation process, the amendment and mediation processes for the budget. Additionally, it contains a provision with respect to the cultural aspect of the partner in that, "the unique First Nations

aspect of SIGA, including promoting First Nations culture, values and traditions, and that SIGA may incur associated costs.”²²⁸

3) *Monthly Reports and Audit Reports.* Article Eleven in the COA specifies the roles, responsibilities, and expectations of the partners with regards to the reporting aspect of the agents of the partners. For example, SIGA is required to submit reports to SLGA on the “rules and procedures including board governance and corporate operational policies....”²²⁹

The timeframe for the reports to be submitted are also specified.

4) *The Steering Committee.* The Steering Committee’s consists of two representatives from both SLGA and SIGA. The key role of the Committee is to “facilitate and co-ordinate communication between SIGA and SLGA.”²³⁰ The committee was established in the 1995 COA, however, the 2002 provision specifies that the representatives must meet at least quarterly, rather than the previous ‘from time to time.’ SIGL is invited to participate in the Committee. Because communication is a vital component for the success of a partnership, it is important to adopt measures that facilitate communication continuity. For instance, in a contractual relationship, the partners require established communication procedures to ensure that performance evaluation and adjustments are continually improving.

5) *Capacity Building.* SLGA and SIGA have agreed to “work together to develop SIGA’s capacity to operate and manage the Slot Machines and the Central Operating System...”²³¹

The Article contains various additional provisions to ensure the transition for the responsibilities and operational functions of the Slot Machines and Operating system to SIGA is successful.

6) *Covenants.* In addition to the covenants of 1995, which referred to terms such as maintaining ‘corporate existence’ and status as a charitable organization, SIGA further agrees

to comply with the Canadian Institute of Chartered Accountants. In so doing, SIGA agrees to “adopt, maintain and implement board governance and corporate operational policies in all material respects consistent with the guidelines of Canadian Institute of Chartered Accountants.”²³² By adopting these guidelines, SIGA demonstrates that it has increased its transparency, accountability and corporate practices as a professional organization.

7) *Dispute Resolution*. Similar to the *2002 Framework Agreement*, the provisions contained in this section have added emphasis to its previous specifications on dispute resolution and mediation processes. The provisions in the “Events of Default and Termination” do however, remain the same as specified in the 1995 COA.

The *2002 Casino Operating Agreement* is a significant improvement has over its predecessor by instituting specific regulatory guidelines that serve to enhance the accountability framework of the partnership. That is not to say, however, that the new agreement will not require adjustment, amendment and re-evaluation as the partnership proceeds. The sustainability and credibility of the partnership’s accountability framework is based upon a process that will require polishing to adapt to the issues that arise in the future.

4.6 Conclusion

The Federation of Saskatchewan Indian Nations (FSIN) - Province of Saskatchewan gaming partnership has, since its inception, experienced high levels of success in terms of revenues generated, and also encountered significant challenges that served to threaten its stability and credibility as a partnership. The challenges that accounted for the partnership’s instability and reputation were examined in this chapter. By exploring the allegations of the misappropriation of funds, and the responses to these accountability concerns, it became

apparent that there were deficiencies in the accountability framework of the partnership. These accountability deficiencies include: corporate accountability provisions, the clear identification of roles and responsibilities of the partners with respect to jurisdictional authority of the probity of revenues, communication protocols for the SLGA and SIGA, and evaluation and adjustment procedures. Moreover, inadequate specifications for the mediation process contributed to the partnership's instability when the allegations of financial mismanagement at SIGA were proclaimed.

The accountability accusations that were made in 2000 prompted the Province to institute specific directives to SIGA to improve the corporate accountability framework. In response, SIGA demonstrated proficiency in responding to directives and progressed forward to surmount the challenges it encountered. This demonstrated its commitment to, and professionalism in, operating within the partnership. Moreover, the partners illustrated their commitment to the partnership by agreeing to a renegotiation of the agreement process, and by formulating a new twenty-five year agreement. Throughout the partnership, the Province and the FSIN have had to deal with some important issues and developments that have generated important lessons that can be applied to the development of other partnerships between the Aboriginal and provincial governments as well as among these and other orders of government. This is particularly true of lessons regarding the accountability framework of partnership arrangements. The lessons that the FSIN-Province of Saskatchewan gaming partnership has to offer are discussed in the next chapter.

Chapter 5 Conclusion

5.1 Summary of Key Findings

The preceding chapters have addressed four fundamental facets of the gaming partnership established between the Federation of Saskatchewan Indian Nations (FSIN) and Province of Saskatchewan: the genesis of the partnership; the issues of the negotiation process for the partnership arrangement and the consequential nature of that partnership framework; the accountability challenges that emerged in the partnership in 2000; and the content of the 2002 agreement. The key findings are summarized below.

The FSIN and the Province considered that the synergistic rewards offered by the prospect of gaming expansion were significant enough to develop a gaming partnership in Saskatchewan. There were three shared objectives (economic, social and political) and two sets of imperatives (ie. jurisdictional and regulatory) that were served by establishing this gaming partnership. These factors and imperatives are briefly identified in turn.

The FSIN and Province concluded that gaming was a viable economic development strategy that offered substantial financial gain, which through shared revenue distribution could benefit the Aboriginal and non-Aboriginal communities in Saskatchewan. First Nations casino development was perceived as a social initiative aimed at enhancing human and social capital in Aboriginal communities. This mutual aim could be realized through the increased employment opportunities for Aboriginal people, and by designating gaming revenues to foster social development in Aboriginal communities. The shared aim of promoting Aboriginal self-sufficiency and self-determination constituted the political objective for the establishment of a gaming partnership.²³³

The jurisdictional issue of gaming on reserve was instrumental in the decision to create a partnership. Rather than risk having acrimonious relations and a potentially counterproductive outcome in 1993 when the White Bear reserve opened a casino, the FSIN and the Province sought a peaceful resolution in a partnering arrangement. Lastly, the Province was cognizant of the immediate need to develop a ‘gaming strategy’ that would encompass the regulatory and accountability requirements for a rapidly growing industry. The Province perceived a partnership as the means to achieve the regulatory framework it desired. These socio-economic, political, jurisdictional and regulatory factors provided the partners with the determinants for the development of First Nations casinos.

The decision to establish a gaming partnership was not without its criticisms. Indeed, opponents have argued against gaming on socio-economic terms and others on ethical grounds. However, the opposition did not dissuade the FSIN and the Province from entering into a partnership.

Once the partners agreed to engage in a collaborative partnership, negotiations commenced between them to formulate a formalized, contractual arrangement that would specify the accountability, regulatory, operational and relational terms of the arrangement. The multitude of complex and multidimensional issues of the partnership contributed to a protracted negotiation process.²³⁴ The major issues requiring conciliation included jurisdictional considerations, a revenue sharing formula, an appropriate regulatory framework for gaming that complied with the *Criminal Code of Canada*, and on the number and location of First Nations casinos. Eventually these issues as well as various related issues such as the roles and responsibilities for the ‘agents’ of the

partnership - Saskatchewan Liquor & Gaming Authority (SLGA) and Saskatchewan Indian Gaming Authority (SIGA) - were resolved. The initial round of negotiations produced arrangements that were included within the first two key documents of the partnership - the *1995 Framework Agreement* and the *1995 Casino Operating Agreement*.

The FSIN and the Province signed the key documents for a five-year term. In March 2000 the term of the agreement expired, and an interim agreement was to be in effect until December 2000 when a new agreement was to be formulated. However, in June 2000 with the allegations of misappropriation of funds at the management level of Saskatchewan Indian Gaming Authority (SIGA), the Province responded by suspending deliberations for a new agreement, and by issuing two sets of directives to SIGA. These directives were based on the Provincial Auditor's recommendations that indicated substantial changes for the corporate structure at SIGA, and focused on improving its accountability mechanisms (i.e., planning, reporting, communication, and a change in the conduct of audits). SIGA complied promptly and efficiently with the directives, and thus demonstrated its commitment to improve accountability in the partnership. SIGA achieved eight of the specified directives by July 2001, and as a result negotiations for a new agreement commenced. The accountability challenges that emerged had negative implications for the partnership; relations between the partners were temporarily unstable, and the accountability and transparency reputation of the partnership was damaged. Both the partners and the partnership were facing significant political problems.

Through the difficulties that the partnership encountered in 2000 it became apparent that there were deficiencies in the nature of the partnership's framework,

particularly with respect to the accountability provisions of the arrangement.

Accountability shortfalls regarding SIGA included specifications for conflict of interest guidelines, business and sponsorship policies, and codes of conduct for the Board and organization. Beyond this, the agreement lacked specified provisions on the First Nations Trust roles and responsibilities, and for the Trust's overall accountability requirements. As for the partnering relations between SIGA and SLGA, accountability mechanisms were inefficient in the areas of the information management, evaluation and communication protocols. The deficiencies in the framework would become principal issues in the negotiation process for the formulation of the 2002 agreement.

The content of the new twenty-five year agreement reflects the partners' deliberations on two sets of key issues, those issues that emerged due to the accountability problems and those issues that required reevaluation as a result of the evolution of the partnership. The result of these negotiations was a framework that has expanded upon key provisions in the *1995 Framework Agreement* and included some new ones. The fortified provisions in the agreement relate to: jurisdictional issues, regulatory issues of casino operations, revenue sharing provisions, licensing regulations, dispute resolution processes, capacity building, and regulatory guidelines that enhance the accountability mechanisms. Additionally, the new agreement included key provisions for the First Nations Trust and the Community Development Corporation as well as the so-called 'survival of provisions' should the FSIN gain full jurisdiction for on-reserve gaming activities.

The *2002 Framework Agreement* and the *2002 Casino Operating Agreement* incorporate improved provisions for the management, regulatory and accountability

features of the arrangement. However, the sustainability and success of the gaming partnership is not only dependent upon the implementation of new provisions; its success is also contingent on the processes of re-evaluation, re-adjustment, and amendment, all of which require the partners' commitment, collaboration and adaptability.

5.2 Assessment of Lessons Learned

In recent years collaborative partnerships have become very important strategic initiatives for governmental and non-governmental organizations in response to external forces and influences. The practical reality of collaborative partnerships is that they encounter a variety of challenges that can compromise their potential for success. The way that partners in various partnerships deal with such challenges is instructive for other partnering arrangements. The FSIN – Province of Saskatchewan gaming partnership provides a case study that exemplifies a partnership that faced crucial challenges, yet was able to deal with them in a relatively positive and constructive manner to the benefit of both partners. This section will briefly summarize some of the lessons learned from the evolution of that partnership from its inception in 1995 to the signing of the 2002 agreement, and particularly in the way that it dealt with what seemed to be not only a challenge but a crisis.

The FSIN – Province of Saskatchewan gaming partnership provides valuable lessons, particularly with respect to the importance of accountability frameworks. Among other things, it underscores the importance of a solid framework agreement, the necessity of monitoring and evaluating the operations of the partnership, and the need to sustain a

positive working relationship among the partners. These three dimensions of partnering are discussed in turn below.

The FSIN-Province gaming partnership reveals that in the initial stages of a partnership, the partners must negotiate, plan, and design a solid framework that clearly delineates the roles and responsibilities, procedures, structures and protocols for the arrangement. The gaming partnership displays that given the complexity involved in partnerships this is a very difficult task, and that there were shortfalls in the framework that gave rise to accountability difficulties. It is therefore crucial that in the initial planning stage the partners do the following matters: articulate the partnership's objectives and vision; identify governance issues such as who is responsible for what, especially if something goes wrong; develop an understanding of the risks and risk management related to the management of financial and human resources; and develop clear operating principles and procedures.²³⁵ The FSIN - Province of Saskatchewan gaming partnership serves to illustrate how accountability problems can emerge when the matters related to the roles and responsibilities of the partners, as well as various procedures in dealing any problems that may emerge, are not clearly developed as was evident by the inadequate corporate governance procedures at SIGA.

The FSIN - Province gaming partnership reveals that a solid, written and formalized framework is the foundation required for a successful partnership. Such an agreement should institutionalize agreed upon mechanisms for monitoring, evaluating, and reporting the partnership's performance.²³⁶ To enhance the success of these mechanisms the monitoring, evaluation and reporting systems must be credible by ensuring that they provide reliable information. Moreover, the partnership should ensure

that the “capacity of the partners to monitor performance” and to assess the level of risk involved in the arrangement is adequate.²³⁷

This thesis reveals that the FSIN - Province gaming partnership had difficulties with monitoring and reporting in the partnership arrangement that created serious accountability concerns. The Provincial Auditor’s 1997 Fall Report identified the monitoring inadequacies of the SIGA operations, yet substantial changes to the mechanisms were not employed until 2000.²³⁸ The lesson to be drawn from that experience is that collaborative, corrective actions should be taken expeditiously to deal with any accountability problems as they arise. Another lesson is that incorporating a learning culture into the arrangement is important because it provides the partners, particularly at the managerial level, with the information to identify and manage such problems if they occur. Moreover, encouraging a learning culture strengthens skill areas such as joint monitoring, joint evaluation, management, consultation, consensus building, negotiation, and an understanding of the ‘other’, all of which are essential in successful partnering relationships.²³⁹

The FSIN – Province gaming partnership reveals that the elements of building and maintaining partnering relationships are of significant importance to a partnership. These relations are important because collaborative partnerships are in essence based upon mutual trust, decision-making, power sharing and cooperation, and without these elements the partnership cannot be sustained.²⁴⁰ The level of trust has implications for working relations at all stages in a partnership.²⁴¹ For instance, initially the level of trust was damaged with the White Bear incident in 1993, and thus the consultation and negotiation process was protracted and strained. However, once trust was revitalized with

the relationship that developed between the FSIN and the Province, the negotiation process proceeded with much greater efficiency and efficacy.²⁴² This example also demonstrates another important lesson in partnering, namely that interpersonal relations are essential for the success of partnerships. There must be a good working relationship based on high levels of trust and a shared commitment to the partnership.

Another important lesson that can be drawn from the FSIN – Province gaming partnership is that partners should not underestimate the degree of time, effort, commitment, and resources required to sustain partnering relations in a collaborative partnership. It is important to keep in mind that adjustment is required to adapt to the changes in procedure and practice involved in power sharing, joint decision-making, joint planning, and communication. It is also important to keep in mind that by instituting approaches to build capacity for the less powerful partner or partners, the concept of power sharing becomes more appealing and lends to the success of the partnership. This is attributable to the gained sense of trust that occurs when partners increase their level of capabilities; the partners are more apt to contribute to the partnership; and risks can be reduced because the partners assume a greater role in shared responsibility. Recently, the gaming partnership has been striving to institute capacity building for the FSIN. For example, the *2002 Casino Operating Agreement* formulated a section on “Capacity Building” that specifies “SLGA and SIGA shall work together to develop SIGA’s capacity to operate and manage the Slot Machines and Central Operating System....”²⁴³ Moreover, the FSIN and the Province are formulating a jurisdiction proposal for the federal government, details of which are specified in the *2002 Framework Agreement*. Not only is the proposal an attempt to resolve the issue of

jurisdiction that emerges throughout the various stages of the partnership, but also indicates a step towards capacity building for SIGL and its employees.²⁴⁴

The final two lessons from the FSIN - Province gaming partnership are: first that although collaborative partnerships are complex and challenging, the benefits of a successful partnership can be substantial; and second that partnerships are dynamic and evolving and need to be nurtured consistently if they are to be successful over a substantial length of time.

5.3 Prospects for the Future of the Partnership

It is difficult to predict what the prospects are for the Federation of Saskatchewan Indian Nations (FSIN) – Province of Saskatchewan gaming partnership. However, there are at least three indicators that point to a favourable direction for the partnership. First, in 2002 the partners signed a twenty-five year agreement that is a positive indication of the level of confidence, trust and stability that the partnership arrangement has achieved. Second, the partners are cognizant of the importance of jurisdictional issues involving on reserve gaming, and have implemented capacity building approaches to ensure that the regulatory aspects of gaming are dealt with comprehensibly before transfer is instituted.²⁴⁵ Third, the Saskatchewan Indian Gaming Authority (SIGA) demonstrates a progressive trend in its management and operations. For instance, the net revenues generated for the 2002-03 fiscal year were \$29,837,799, which is up eighteen percent from the previous year.²⁴⁶ SIGA has endeavored to improve its level of professionalism and accountability since its challenges in 2000. For instance, SIGA has developed a three year “Strategic Plan” which clearly delineates its objectives related its business plan, its

“reaffirmation of the SIGA vision, mission, and guiding principles...” and its objectives for human resources, community relations, and employment development.²⁴⁷ Optimism for the industry is reflected in a statement made by SIGA CEO Edmund Bellegarde:

“The future is bright, for SIGA, our stakeholders and the First Nations people of Saskatchewan. As we continue to search for opportunities to expand into new markets, we take pride in the accomplishments of the past year. It’s the hard work of a great many people that we owe our achievements – and we share our success.”²⁴⁸

Additional considerations for the future in Saskatchewan include the questions of long-term gaming sustainability, and whether or not casino development has reached its saturation point in the province. Further research is important to determine how and to what extent First Nations gaming has contributed to the socio-economic development in Aboriginal communities. Further research is also required to determine whether gaming has served to enhance nation building, social or human capital in Aboriginal communities, and if so how. To provide meaningful analysis for other Aboriginal and non-Aboriginal partnerships, it is also valuable to explore the complexity of partnering relations by examining the informal rules and structures, and discern how these processes of communication, personal relationships, or leadership are managed in a partnership. It is also useful to examine how organizations overcome and manage their cultural differences to facilitate successful relationships. Of course, this is not an exhaustive list of future direction for research. There are many relevant and important issues related to gaming, Aboriginal development, and partnerships that must be examined.

There is no denying that the FSIN – Province gaming partnership has received much attention for its problems of accountability and transparency record in recent years. This constitutes a blemish on its reputation but does not constitute a catastrophic blow to

its legitimacy. Those who give undue attention to this blemish overlook the fact that in many respects it has been a very successful partnership. One of the most significant aspects of that success was the manner in which the partners adjusted and adapted to the challenges it faced during the controversy on financial management practices. The FSIN and the Province realized the importance of the gaming partnership and were committed to work together at evaluating and developing partnering approaches to facilitate the required change. The future of the gaming partnership is highly subject to the ability of the partners to sustain positive partnering relations, to comply with the accountability mechanisms, and to successfully manage the partnership's evolution.

Endnotes For Chapter 1

² The term “Aboriginal” refers to Indigenous People in Canada, as defined in Section 35 of the *Constitution Act of 1982*, which states “aboriginal peoples of Canada includes the Indian, Inuit and Metis peoples of Canada.”

³ Although there is no legal definition of “First Nations” the term has been commonly used since the 1970s. First Nations is widely used to replace the word “Indian,” which is offensive to many people. Many ‘Indian’ people have also adopted “First Nation” to replace the term “band.” See “Definitions” on the Department of Indian Affairs and Northern Development website at www.ainc-inac.gc.ca

⁴ ‘New Public Management’ surfaced in public management as a paradigm shift from the traditional public administration in response to criticisms of heavy control and inflexible management practices. Kernaghan and Siegel (1999) define NPM as “a style of management that borrows heavily from private sector principles and focuses on values like customer service, flexibility in delivery, entrepreneurship, and empowerment.” John Allan, “Public-Private Partnerships: A Review of Literature and Practice,” Saskatchewan Institute of Public Policy Public Policy Paper No.4, 6-7.

⁵ Stephen Linder and P. Vaillancourt Rosenau, “Mapping the Terrain of the Public-Private Policy Partnership,” in Pauline Vaillancourt Rosenau (ed.), Public - Private Partnerships (London: MIT Press, 2000), 6; and Ronald McQuaid, “The theory of partnership,” in Stephen Osborne (ed.), Public Private Partnerships (London: Routledge, 2000), 10; and Maureen Mackintosh, “Partnership: Issues of Policy And Negotiation,” Local Economy 7 (1991), 213.

⁶ Kenneth Kernaghan, “Partnership and public administration: conceptual and practical considerations,” Canadian Public Administration 36 (1993), 61.

⁷ According to J. Brinkerhoff (2002)(b), the mutuality dimension of a partnership infers that the principles of mutuality includes mutual trust and respect, and agreed upon values, decision making and purposes. Moreover, mutuality “refers to mutual dependence, and entails respective rights and responsibilities of each actor to the other....” These mutuality dimensions are prerequisites for successful partnering relations. See Jennifer Brinkerhoff, “Assessing and improving partnership relationships and outcomes: a proposed framework,” Evaluation and Program Planning 25 (2002) (b).

⁸ Brinkerhoff J. (2002)(b); and Vivien Lowndes and Chris Skelcher, “The Dynamics Of Multi-Organizational Partnerships: An Analysis Of Changing Modes Of Governance,” Public Administration 76 (1998), 320; and Macintosh, 213-214.

⁹ McQuaid, 14-19; and Alti Rodal and Nick Mulder, “Partnerships, devolution and power-sharing: issues and implications for management” The Journal of Public Sector Management 24 (1993).

¹⁰ Kernaghan, 62-65; and Rodal (1993); and David Wright and A. Rodal, “Partnerships and Alliances,” in Mohamed Charih and Arthur Daniels (eds.), New Public Management and Public Administration in Canada (Toronto: IPAC, 1997), 267.

¹¹ Kernaghan, 62.

¹² Ibid., 63.

¹³ Ibid., 63-65; and Rodal, (1993).

¹⁴ The partnership phenomenon encompasses a wide spectrum of types, and thus the classification of partnerships is not limited to the four categories listed. For example, Delecourt/Lenihan (1999) and Armstrong/Lenihan (1999) identify the ‘Client-Contractor,’ the ‘Intergovernmental’ and the ‘Collaborative’ as types of public sector partnership arrangements. Meanwhile, Lewis (2000) classifies partnerships based on the differing relationships between agencies or organizations, wherein the contrasting characteristics indicate an ‘active’ partnership or a ‘dependent’ partnership. Further, the OECD (1999) categorizes intergovernmental partnerships based on the form of performance contracting the institutions espouse.

¹⁵ Armstrong (1999), 16-23; and Denis Desautels, “Accountability for Alternative Service-Delivery Arrangements in the Federal Government,” New Directions 6 (1999), 23; and Arthur Himmelman, “On the Theory and Practice of Transformational Collaboration: From Social Service to Social Justice,” in Chris Huxham (ed.), Creating Collaborative Advantage (London: Sage Publications Ltd, 1996), 58-59; and Rodal et al (1993).

¹⁶ Kernaghan, 66-67; and Chris Huxham, “Collaboration and Collaborative Advantage,” Creating Collaborative Advantage (London: Sage Publications Ltd., 1996), 8-11.

¹⁷ Jim Armstrong, “Innovation in public management: toward partnerships,” The Journal of Public Sector Management 23 (1992), 23-24; and John Allan, 12-14; and John Hailey, “NGO partners: The characteristics of effective development partnerships,” in Stephen Osborne (ed.), Public-Private Partnerships (London: Routledge, 2000), 316-317

¹⁸ Kernaghan, 67.

¹⁹ Armstrong, (1999), 10.

²⁰ Armstrong, (1999), 34; and Canada, 1999 Report of the Auditor General of Canada, “Collaborative Arrangements: Issues for the Federal Government,” Chapter 5 (5.34). The concept of ‘confidence’ within a partnership conveys a meaning that is “based on

rational, expectations, typically grounded in institutional arrangements, such as contracts, regulations, and standard operating procedures.” See Jennifer Brinkerhoff, “Assessing and improving partnership relationships and outcomes: a proposed framework,” Evaluation and Program Planning 25 (2002) (b).

²¹ Chris Huxham and Siv Vangen, “What makes partnerships work?” in Stephen Osborne (ed.), Public-Private Partnerships (London: Routledge, 2000), 307.

²² Jennifer M. Brinkerhoff; and Armstrong, (1999), 32-35.

²³ Stephen Linder, “Coming to Terms with the Public-Private Partnership,” American Behavioral Scientist 42 (1999), 47.

²⁴ Huxham (2000), 297-299; and Siv Vangen and Chris Huxham, “Nurturing Collaborative Relations : Building Trust in Intergovernmental Collaboration,” in Stephen Osborne (ed.), Public-Private Partnerships (London: Routledge, 2000), 18.

²⁵ Hailey, 320.

²⁶ Ian Chapman, Don McCaskill, and David Newhouse, “Management In Contemporary Aboriginal Organizations” The Canadian Journal of Native Studies 11 (1991), 334.

²⁷ Kernaghan, 75.

²⁸ Denis Desautels, “Accountability for Alternative Service-Delivery Arrangements in the Federal Government: Some Consequences of Sharing the Business of Government,” in S. Delecourt and D. Lenihan (eds.), Collaborative Government: Is There a Canadian Way? (1999), 27.

²⁹ 1999 Report of the Auditor General, 5.44 – 5.63

³⁰ Ibid., 5.22-5.28.

³¹ Kernaghan, 74-75.

³² Rodal, (1993).

³³ Organization for Economic Co-operation and Development (OECD), “Managing Accountability In Intergovernmental Partnerships,” 1999, 3.

³⁴ Gerald Caiden, “Ensuring the Accountability of Public Officials,” in Joseph Jabbra and O.P. Dwivedi (eds.), Public Service Accountability: A Comparative Perspective (Connecticut: Kumarian Press, Inc., 1989), 25.

³⁵ Taiaiake Alfred, Peace, Power, Righteousness. An Indigenous Manifesto (Don Mills, Ontario: Oxford University Press, 1999), 91-92.

³⁶ Tom Pocklington and Sarah Pocklington, "Aboriginal political ethics," in Corruption, Character, and Conduct: Essays on Canadian Government, ed. John W. Langford and Allan Tupper (Toronto: Oxford University Press, 1993), 52.

³⁷ Brinkerhoff (2000)(b), 5.2.1.

³⁸ 1999 Report of the Auditor General of Canada, 5.76

³⁹ Ibid., 5.83

⁴⁰ The definition of content analysis for the purposes of this thesis is defined as a research technique for making valid inferences by systematically and objectively identifying specified characteristics of message or data to their content. A comprehensive explanation of this particular methodology can be obtained in books such as, T.C. Carney, Content Analysis, Winnipeg: University of Manitoba Press, 1972; and Klaus Krippendorff, Content Analysis: An Introduction to Its Methodology, London: Sage Publications Ltd., 1980

Endnotes for Chapter 2

⁴¹ Key works related to various types of partnerships include: James Armstrong, "Innovation in public management: towards partnerships," The Journal of Public Sector Management 23 (1992); and Kenneth Kernaghan, "Partnership and public administration: conceptual and practical considerations," Canadian Public Administration 36 (1993); Ronald McQuaid, "The theory of partnerships: why have partnerships?" in Stephen Osborne (ed.), Public – Private Partnerships (London: Routledge, 2000); and David Wright and Alti Rodal, "Partnerships and Alliances," in Mohamed Charih and A. Daniels (eds.), New Public Management and Public Administration in Canada (Toronto: The Institute of Public Administration Canada, 1997).

⁴² "Economic Development Index", www.ainc.inca.gc.ca/ead/index retrieved June 6, 2003.

⁴³ Saskatchewan Intergovernmental and Aboriginal Affairs, "Practical Approaches To Issues Affecting Metis And Off-Reserve First Nations People In Saskatchewan", January 1999.

⁴⁴ For the purposes of this thesis, 'Aboriginal economic development' refers to a broad scope of development; not merely its economic aspect such as Gross Domestic Product (GDP). Here, the term denotes that development is culturally compatible; and development maintains Aboriginal approaches, values, norms, and decision-making processes.

⁴⁵ Saskatchewan, Debates and Proceedings, Mr.Lautermilch, 3rd session, 22 Legislature, June 1993.

⁴⁶ In 1993, the Saskatchewan Economic Development and Saskatchewan Gaming Commission employed Fox Consulting of Reno, Nevada to prepare an analytical study to examine the demand and impact of gaming in Saskatchewan. It is referred to as the “Economic Feasibility Of Casino Gambling In The Province of Saskatchewan,” 1993.

⁴⁷ “Economic Feasibility Of Casino Gambling In The Province of Saskatchewan,” 37.

⁴⁸ Saskatchewan, Debates and Proceedings, Mr.Lautermilch, 3rd session, 22 Legislature, June 1993.

⁴⁹ R. v. Bear Claw Casino Ltd, Saskatchewan Provincial Court, Goliath, P.C.J., October 4, 1994, Canadian Native Law Report, 82- 84; and Saskatchewan, Debates and Proceedings, Mr. Mitchell, 3rd session, 22 Legislature, May 1993.

⁵⁰ Kathryn Gabriel, Gambler Way, Boulder, Colorado: Johnson Books Ltd., 1996, 3; and Dale Mason, Indian Gaming: Tribal Sovereignty and American Politics (Norman: University of Oklahoma Press, 2000), 44.

⁵¹ Gabriel, 215.

⁵² Aboriginal economic development faces multifarious barriers to economic development. These barriers, for the most part, parallel the economic development difficulties for the Tribal governments in the United States. For a comprehensive description of these kinds of barriers refer to: Cornell and Kalt, “Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations,” in Stephen Cornell and Joseph Kalt (eds.), What Can Tribes Do? Strategies and Institutions In American Indian Economic Development, Los Angeles: American Indian Studies Center University of California, 1992 1-61; and Jeffrey Gantz, “Aboriginal Economic Development,” Ivey Business Journal, 64 (1999); and RCAP Volume 2, Restructuring the Relationship; and Elizabeth Jordan, “The Challenges of Financing First Nations Small Business,” in Stephen Smart and Michael Coyle (eds.), Aboriginal Issues Today, Vancouver: Self Council Press Ltd., 1997; and Calvin Helene, “Options For Raising Capital For Aboriginal Business and Communities,” in Financing Aboriginal Canada Inc. In the Next Millenium, Toronto: A National Conference, 1996.

⁵³ Nicholas Ribis and Michelle Traymar, “The Great Spirit in a New Era: Gaming on Pequot Tribal Land,” Cultural Survival Quarterly 19 (1995), 11.

⁵⁴ “Gaming Conference examines all aspects” Windspeaker May 24, 1993.

⁵⁵ Ibid.

⁵⁶ Stephan Cornell and Joseph Kalt, "Sovereignty and Nation Building," American Indian Culture and Research Journal 22:3 (1998), 187.

⁵⁷ Mason, 4.

⁵⁸ Ambrose I. Lane, Sr. Return of the Buffalo: The Story Behind America's Indian Gaming Explosion, Westport, Connecticut: Bergin & Garvey, 1995, xviii.

⁵⁹ The term 'gambling' encompasses the games of chance that include: lottery tickets, VLTs, bingo, and horse betting; whereas 'gaming' activities in First Nations casinos include table games, video lottery terminals and or slot machines. Canada, "A Report by the National Council of Welfare," Gambling in Canada, (Ottawa:1996), 7-8.

⁶⁰ Francois Vaillancourt and Alexandre Roy, Gambling And Governments in Canada, 1969 – 1998: How Much? Who Pays? What Payoff? (Toronto: Canadian Tax Foundation, 2000), 9.

⁶¹ Saskatchewan, Debates and Proceedings, Mr.Lautermilch, 3rd session, 22 Legislature, June, 1993.

⁶² FSIN, Saskatchewan and Aboriginal Peoples in the 21st Century: Social, Economic and Political Changes and Challenges, Regina: PrintWest Publishing Services, 1997, 37-50.

⁶³ Ibid., 49,45 & 88.

⁶⁴ Ibid., 78; and Canada, Indian and Northern Affairs Canada, Implications of First Nations Demography, Prepared by Four Directions Consulting Group: Winnipeg, Manitoba, 1997.

⁶⁵ Frank Cassidy and Robert Bish, Indian Government: Its Meaning In Practice, (British Columbia (B.C.): Oolichan Books 1989), 110; and Royal Commission on Aboriginal People (RCAP) Volume 2: Restructuring the Relationship, 906; and Fred Wein, "Economic Development And Aboriginal Self-Government," in John Hylton and Phil Fontaine (eds.), Aboriginal Self-Government in Canada (Saskatoon, Saskatchewan: Purich Publishing Ltd., 1999), 262.

⁶⁶ Saskatchewan, Debates and Proceedings, Ms.Haverstock, 4th session, 22 Legislature, May 30, 1994.

⁶⁷ Ibid., Lautermilch, May 27, 1994.

⁶⁸ Elizabeth Jordan, "The Challenge of Financing First Nations Small Business," in Stephen Smart and Michael Coyle (eds.), Aboriginal Issues Today (Vancouver, B.C.: Self Council Press Ltd., 1997), 215; and Royal Commission on Aboriginal People (RCAP) Volume 2: Restructuring the Relationship, 906; and Calvin Helin, "Options For Raising

Capital For Aboriginal Business And Communities,” in Financing Aboriginal Canada Inc. In the Next Millenium (Toronto: A National Conference, 1996), 1.

⁶⁹ Saskatchewan Indian Gaming Annual Report 2001-2002, 4 & 16.

⁷⁰ Ibid.

⁷¹ Saskatchewan Indian Gaming Authority, Sharing Success: 2002 - 2003 Annual Report, 37.

⁷² Matthew Coon Come, www.afn.ca/programs/economic retrieved November 2, 2002.

⁷³ In addition to the assertion that attaining economic self sufficiency is a necessary component to improving self determination, some researchers such as R. Anderson also maintain that economic self sufficiency also preserves and strengthens traditional values, cultures and languages. See Robert Anderson, “Aboriginal People, Economic Development and Entrepreneurship,” The Journal of Aboriginal Economic Development 2 (2001), 33-42.

⁷⁴ Stephen Cornell and Joseph Kalt, “Sovereignty and Nation-Building: The Development Challenge in Indian Country Today”, American Indian Culture And Research Journal, 22:3 (1998), 188.

⁷⁵ RCAP, Volume 2, 825.

⁷⁶ Robert Anderson and Robert Bone, “First Nations Economic Development: A Contingency Perspective, The Canadian Geographer, 39 (1995), 122.

⁷⁷ 2002 Framework Agreement, 11& 16.

In reference to the Community Development Corporation, it receives 25% of the annual net profits of the First Nations casinos that are located on reserve. If the casinos are located off reserve, these profits are allocated to the Community Initiatives Fund that is designated by the province and established under *The Saskatchewan Corporations Act*.

⁷⁸ Saskatchewan Debates and Proceedings, Mr.Lautermilch, 3rd session, 22 Legislature, June 1, 1993.

⁷⁹ RCAP, Volume 2, 777.

⁸⁰ Ibid, 825.

⁸¹ Saskatchewan, Debates and Proceedings, 2nd session, 22 Legislature, April 1992.

⁸² Frank Cassidy and Shirley Seward, editors, Alternatives to Social Assistance in Indian Communities, Institute for Research on Public Policy, 1991, 7; and www.afn.ca/Programs/Economic retrieved November 22,2002.

⁸³ R. v. Bear Claw Casino Ltd. Canadian Native Law Review (C.N.L.R) 4, 1994, 83.

⁸⁴ Ibid.

⁸⁵ Ibid., 82.

⁸⁶ Ibid.

⁸⁷ Ibid., 81.

⁸⁸ Colin Campbell and Garry Smith, "Canadian Gambling: Trends and Public Policy Issues," The American Academy of Political and Social Science 556 (1998), 23.

⁸⁹ Judith Osborne, "The Canadian Experience," in William Eadington (ed.), Indian Gaming & The Law (Nevada: Institute for the Study of Gambling and Commercial Gaming, 1998), 175.

⁹⁰ Patrick Monahan and Gerold Goldlist, "Roll Again: New Developments Concerning Gaming," Criminal Law Quarterly 42 (1999), 189; and Judith Osborne "The Canadian Experience," in William Eadington (ed), Indian Gaming & The Law (Nevada: Institute for the Study of Gambling and Commercial Gaming, 1998), 17-175.

⁹¹ Canada, Senate Committee on Legal and Constitutional Affairs, December 1985, 29:23.& 30:13

⁹² Ibid.,29:20-2; See also Judith Osborne and Colin Campbell, "Recent Amendments To Canadian Lottery and Gaming Laws: The Transfer Of Power Between Federal and Provincial Governments", Osgoode Hall Law Journal 26,(1988), 25.

⁹³ Osborne, (1998), 175.

⁹⁴ Canadian Legal Information Institute, *Criminal Code Part VII Disorderly Houses, Gaming And Betting*, www.canli.org/ca retrieved June 4, 2003.

⁹⁵ In the 1996 Supreme Court case R. v. Pamajewon, the Shawanaga First Nation and the Eagle Lake First Nation asserted an inherent right to self-government and the right to self-regulating economic activities (respectively) as defense for its gambling activities on-reserve. However, both were found guilty of the offence of "keeping a common gaming house contrary to s. 201(1) of the *Criminal Code*." For further details refer to R.v. Pamajewon, Supreme Court Report (S.C.R.) 2, 1996, 821.(The report can be retrieved at www.lexum.umontreal.ca/csc-scc/en/pub/1996/vol2).

⁹⁶ Paul Frits, "Aboriginal Gaming- Law and Policy", Aboriginal Issues Today: A Legal and Business Guide, ed. Stephen Smart and Michael Coyle, (North Vancouver: Self Account Press Ltd, 1997), 228.

⁹⁷ Yale Belanger, "The Morality Of Aboriginal Gaming: A Concept in the Process of Definition," The Journal of Aboriginal Economic Development 2 (2002), 26.

⁹⁸ Osborne (1998), 207.

⁹⁹ Saskatchewan, Debates and Proceedings, Mr. Lautermilch, 4th session, 22 Legislature, May 27, 1994.

¹⁰⁰ Kenneth Kernaghan and David Siegal, Public Administration in Canada (Scarborough, Ontario: International Thomson Publishing, 1999), 260.

¹⁰¹ Saskatchewan, Debates and Proceedings, Ms. Haverstock, 2nd session, 22 Legislature, July 29, 1992.

¹⁰² The jurisdictional issue of gaming was also a thorny debate in legislature, which is reflected in the government opposition (Haverstock) assertion that Aboriginal jurisdiction is "exempt from state and provincial gaming laws", yet the Minister of Justice maintained gaming is a provincial responsibility; meanwhile circumstances at White Bear reserve were looming, unresolved.

¹⁰³ Saskatchewan, Debates and Proceedings, Mr. Lautermilch, 3rd session, 22 Legislature, June, 1993.

¹⁰⁴ Saskatchewan, Debates and Proceedings Lautrmilch, 4th session, 22 Legislature, May 24, 1994.

¹⁰⁵ Ibid., Ms. Crofford, 5th session, 22 Legislature, February 9, 1995.

¹⁰⁶ Ibid., Mr. Lautermilch, 3rd session, 22 Legislature, June 1, 1993.

¹⁰⁷ Ibid., Mr. Lautermilch, 4th session, 22 Legislature, May 27, 1994.

¹⁰⁸ Ibid.

¹⁰⁹ Alison DuBois, John Loxley and Wanda Wuttunee, "Gambling On Casinos," The Journal of Aboriginal Economic Development 2 (2002), 57.

The advancement in Tribal sovereignty in the United States served as an important model for the FSIN of what could be achieved. Nevertheless, there are notable differences between the United States and Canadian gaming experiences. The most notable of these is the regulatory and legal agreements required for casino operations. It is therefore important to take into account these differences whenever comparisons are made. For a succinct delineation of the legal classifications established for Tribal gaming in the United States under the legislation of the Indian Gaming Regulatory Act (IGRA), and a recent historical depiction of the Native American gaming development in the United

States, refer to Gary Anders, "Indian Gaming : Financial and Regulatory Issues," The Annals of the American Academy of Political and Social Science 556 (1998), 98-108; and William Thompson, "History, Development, and Legislation of Native American Casino Gaming," in Cathy Hsu (ed.), Legalized Casino Gaming in the United States: The Economic and Social Impact, New York: The Haworth Hospitality Press, 1999, 41-63.

¹¹⁰ Lennart Henriksson and Richard Lipsey, "Should Provinces Expand Gambling?" Canadian Public Policy 25 (1999), 262-265.

Endnotes For Chapter 3

¹¹¹ Saskatchewan, Debates and Proceedings, Mr. Lautermilch, 4th session, 22 Legislature, May 27, 1994.

¹¹² According to John Butler when relations are built upon trust in negotiations, the negotiation process becomes more effective, or in other words the 'integrative' approach to bargaining. The FSIN and Province may have adopted the integrative bargaining approach to negotiations, which also serves to achieve mutual win through concession and deals with a number of issues simultaneously (thus trade-offs are possible). Refer to Raymond Saner and Bradley Kemp for further details on the theory of negotiation process. See Raymond Saner, The Expert Negotiator, (the Netherlands: Kluwer Law International, 2000); and Bradley Kemp, "Contextual and Relational Factors in Interpersonal Negotiation Strategy Choice" Communication Quarterly 47 (1997); and Churchman David, Negotiation, (Lanham, Maryland: University Press of America, 1995).

¹¹³ Saskatchewan, Debates and Proceedings, Mr. Lautermilch, 4th session, 22 Legislature, May 27, 1994.

¹¹⁴ *1995 Framework Agreement*, 1.

¹¹⁵ *Ibid.*, 3.

¹¹⁶ Government of Saskatchewan, Saskatchewan Liquor & Gaming Authority Annual Report 1994-1995, 15.

¹¹⁷ *Ibid.*, 16.

¹¹⁸ Art Robinson, Star Phoenix, October 21, 1994.

¹¹⁹ Saskatchewan, Saskatchewan Liquor and Gaming Authority 1995-96 Annual Report, 11.

¹²⁰ Saskatchewan, Debates and Proceedings, 2nd session 22 Legislature, April, 1992.

¹²¹ The ‘design’ of the First Nations casinos was different than the existing exhibition association casinos in terms of the FSIN’s objectives, which are to enhance tourism and promote local businesses. For instance, the First Nations casinos were constructed on a much larger scale and aimed to offer other activities such as entertainment and dining to facilitate the objectives of increasing tourism in the communities in which they were established.

¹²² Slot machines are more ‘labour intensive’ and are paid out by cash, unlike the VLTs (electronic gaming machines) that are based upon a ticket system, not cash. However, VLTs are more addictive, and patrons can spend substantial monies in a short period of time. VLTs are referred to by some as the ‘crack cocaine of gambling.’

¹²³ Saskatchewan, Debates and Proceedings, M. Martens, 3rd session, 22 Legislature, June, 1993.

¹²⁴ Patrick Monahan and A. Gerold Goldlist, “Roll Again: New Developments Concerning Gaming” Criminal Law Quarterly 42 (1999), 190.

¹²⁵ For a detailed description or definition of the “Operating Policies and Directives” refer to pages 5-6 and 8 of the *Casino Operating Agreement*, and the Appendix is attached to the COA.

¹²⁶ In addition to regulating the four First Nations casinos, SLGA regulates the Casino Regina, which is operated by the Saskatchewan Gaming Commission (SGC) and the Emerald Casino that is operated by the Prairieland Exhibition Corporation. A new casino will be established in downtown Moose Jaw, and the SGC will be the operator and SLGA the regulator. The FSIN did make a proposal for a Moose Jaw site, but the SCG proposal was chosen by the Moose Jaw city council.

¹²⁷ Saskatchewan, Saskatchewan Liquor & Gaming Authority Annual Report 2001-02, 14; and www.gov.sk.ca

¹²⁸ *1995 Framework Agreement*, 4.

¹²⁹ *1995 Casino Operating Agreement*, 7 [Emphasis added to quotation].

¹³⁰ Federation of Saskatchewan Indian Nations, *An Act Respecting First Nations Gaming*, 1996, 5.

¹³¹ The number and composition of SIGA’s Board would be changed in 2000, as a result of the accountability crisis that would evolve in 2000. The accountability challenges will be discussed in detail in Chapter 4.

¹³² *Ibid.*, 6.

¹³³ Ibid., 5; and Saskatchewan, Provincial Auditor Saskatchewan 2000 Fall Report – Volume 2, Regina: 2000, 8.

¹³⁴ Federation of Saskatchewan Indian Nations, *An Act Respecting First Nations Gaming*, 4.

¹³⁵ Ibid., 4.

¹³⁶ Ibid., 4.

¹³⁷ Ibid., 8.

¹³⁸ Saskatchewan, Debates and Proceedings McKinnon, 3rd session, 22 Legislature, March 3, 1993.

¹³⁹ *1995 Framework Agreement*, 6.

¹⁴⁰ This ceiling on the number of slot machines in First Nations casinos was increased to 1,120 in the *2002 Framework Agreement*, specified in Part 3.3.

¹⁴¹ *Casino Operating Agreement*, 8.

¹⁴² *1995 Framework Agreement*, 8.

¹⁴³ Ibid., 7.

¹⁴⁴ The Associated Entities Fund was established to offset any losses incurred by the exhibition associations or charities as a result of casino development in the province. These revenues flow to the General Revenue Fund prior to distribution, in order to ensure accountability to the Legislature. Following the revenue distribution amendment in 1998, the name of the fund to which the twenty-five percent of revenues off reserve flow to is the Community Initiatives Fund. This fund is established under *The Saskatchewan Gaming Corporations Act*.

¹⁴⁵ *1995 Framework Agreement*, 6-7.

¹⁴⁶ Ibid., 8.

¹⁴⁷ Ibid., 7.

¹⁴⁸ Saskatchewan, Annual Report 1998-1999 Saskatchewan Liquor and Gaming Authority, 25.

¹⁴⁹ *1995 Framework Agreement*, 9.

¹⁵⁰ Ibid.

¹⁵¹ Ibid., 9,10.

¹⁵² Armstrong et al., 42.

¹⁵³ The only specification for the twenty-five percent of revenues generated from an on reserve casino, is that it be allocated for “charitable purposes related to First Nations.” 1995 *Framework Agreement*, 6-7.

¹⁵⁴ 1995 *Framework Agreement*, 5.

¹⁵⁵ Ibid., 12.

¹⁵⁶ 1995 *Casino Agreement Act*, 9.

¹⁵⁷ Ibid., 12

¹⁵⁸ Saskatchewan, Debates and Proceedings, Hon. J McKinnon, 3rd session, 22 Legislature.

¹⁵⁹ 1995 *Casino Operating Agreement*, 15.

¹⁶⁰ Ibid.,23.

¹⁶¹ 1995 *Casino Operating Agreement*, 10.

¹⁶² Ibid., 5.

¹⁶³ Ibid., 30.

¹⁶⁴ Fox Consulting, “Economic Feasibility of Casino Gambling in The Province of Saskatchewan,” Prepared for the Saskatchewan Economic Development and Saskatchewan Gaming Commission, 1993; and Saskatchewan, Annual Report Saskatchewan Liquor and Gaming Authority, 25.

Endnotes for Chapter 4

¹⁶⁵ Robert Schwartz, “Managing Government – Third Sector Collaboration: Accountability, Ambiguity, And Politics,” International Journal of Public Administration 24 (2001), 1161.

¹⁶⁶ According to Paul Thomas it is essential to incorporate both ‘informal’ and ‘formal’ controls in order to maximize the accountability success within public organizations. He

identifies formal controls as those mechanisms pertaining to “legal mandates, organizational structures, delegation of authority, rules and procedures, information reporting, appraisal systems, rewards and sanction, and audits.” However, the informal controls compliment and enhance the accountability structure of the organization. These include the controls regarding the “communication, leadership, culture, ethics, commitment, and trust” all of which have been identified by the partners as salient aspects of their partnership arrangement. See Paul Thomas, “The Changing Nature of Accountability,” in Guy Peters and Donald Savoie (eds.), Taking Stock: assessing public sector reforms, Montreal: McGill- Queens University Press, 1998, 348-393.

¹⁶⁷ Saskatchewan, Saskatchewan Liquor & Gaming Authority Annual Report 1998 – 1999, 25.

¹⁶⁸ *Amending Agreement*, March 2000, 3.

¹⁶⁹ *Ibid.*, 10.

¹⁷⁰ Saskatchewan, Provincial Auditor 2000 Fall Report – Volume 2, 5.

¹⁷¹ Saskatchewan, Debates and Proceedings, Hon. Ms. Hamilton, 1st session, 24 Legislature, June 21, 2000.

¹⁷² *Ibid.*

¹⁷³ Saskatchewan, Provincial Auditor 2000 Fall Report – Volume 2, 13.

¹⁷⁴ “NDP refuses further SIGA donations,” Star Phoenix (Saskatoon, SK.), June 30, 2000; and Saskatchewan, Debates and Proceedings, 2nd session, 24 Legislature, Ms Eagles, March 23, 2001.

¹⁷⁵ Saskatchewan, Debates and Proceedings, 2nd session, 24 Legislature, Ms. Eagles, June 15, 2001.

¹⁷⁶ *Ibid.*, Ms. Jule, June 7, 2001.

¹⁷⁷ *Ibid.*, Hon. Ms. Lorje, July 4, 2001.

¹⁷⁸ Saskatchewan, Provincial Auditor Saskatchewan 2000 Fall Report – Volume 3, 244-247.

¹⁷⁹ Saskatchewan, Debates and Proceedings, 1st session, 24 Legislature, Ms. Eagles, June 12, 2000.

¹⁸⁰ “SIGA: Justice to investigate spending,” Star Phoenix (Saskatoon, SK.), June 19, 2000.

¹⁸¹ Saskatchewan, Debates and Proceedings, 3rd session, 24 Legislature, Honourable Mr Osika, April 3, 2002. The criminal investigation of SIGA was still ongoing in the Department of Justice, as of April 2002.

¹⁸² “Gaming official suspended,” The Leader-Post (Regina, SK.), June 17, 2000.

¹⁸³ Saskatchewan, Provincial Auditor Saskatchewan, 2000 Fall Report – Volume 2, 12.

¹⁸⁴ Saskatchewan, Provincial Auditor 2000 Fall Report – Volume 2, 32; and Saskatchewan, Debates and Proceedings, 2nd session 24 Legislature, Honourable Ms. Hamilton, March 26, 2001.

¹⁸⁵ Saskatchewan, “SLGA Actions November 15, 2000,” www.gov.sk.ca/newsrel/releases/2000

¹⁸⁶ Saskatchewan, Provincial Auditor 2000 Fall Report – Volume 2, 21.

¹⁸⁷ Saskatchewan, Debates and Proceedings, 1st session, 24 Legislature, June 29, 2000.

¹⁸⁸ *Ibid.*, Ms. Hamilton, June 20, 2000.

¹⁸⁹ *1995 Framework Agreement*, February 10, 1995, 9.

¹⁹⁰ *Ibid.*, 10

¹⁹¹ Saskatchewan, news release CJWW radio, June 21, 2000, at 7:00m.

¹⁹² “SIGA won’t dump Lerat,” Saskatoon Star Phoenix (Saskatoon), June 17, 2000.

¹⁹³ “Gaming official suspended,” The Leader Post (Regina), June 17, 2000.

¹⁹⁴ “Bellegarde blasts gov’t handling of SIGA,” Star Phoenix (Saskatoon), June 30, 2000.

¹⁹⁵ “Bellegarde News Conference June 12, 2000,”

¹⁹⁶ *Ibid.*

¹⁹⁷ Paul Barnsley, “Auditor Reveals SIGA Mistakes,” Windspeaker 18 (2000).

¹⁹⁸ “Chiefs want SIGA board replaced,” Leader Post (Regina), July 8, 2000.

¹⁹⁹ “John Gormley New Talk Radio,” CJME/CKOM, June 28, 2000 8:35 hours.

²⁰⁰ Saskatchewan, “Significant Progress Benchmarks,” www.gov.sk.ca/newrel/2001/03, retrieved December 12, 2002.

²⁰¹ Saskatchewan Indian Gaming Authority, Policy & Procedure Manual, November 2000, 1-7.

²⁰² Jim Armstrong and Donald Lenihan, "From Controlling to Collaborating: When Governments Want To Be Partners" New Directions 3 (1999), 29.

²⁰³ Armstrong, et al, 33.

²⁰⁴ Saskatchewan, "SIGA Meets Accountability Benchmarks," July, 2001, www.gov.sk.ca/newsrel retrieved December 2002.

²⁰⁵ Saskatchewan, Debates and Proceedings, 3rd session, 24 Legislature, Mr. Osika, April 3, 2002.

²⁰⁶ The Province authorized SIGA to pay FSIN \$400,000 to finance some of the expenditures of the negotiating process for the creation of the *2002 Agreement*. The purpose of these funds was to ensure that the FSIN had the opportunity to engage in a negotiation process that was as equal as possible (Debates and Proceedings, December 2002). The negotiations to formulate a solid accountability framework are crucial to the success of the partnering arrangement, and thus by encouraging a level playing field in negotiations the process is refined. However, the Provincial Auditor's 2002 Fall Report did not approve of this expenditure stating that the funds authorized were 'improper use of public money.'

²⁰⁷ *2002 Casino Operating Agreement*, 13 -14.

²⁰⁸ "Interview: FSIN Chief Perry Bellegarde on Gaming Agreement," Saskatchewan NewsWatch, April 27th, 2002.

²⁰⁹ "News Talk Radio with John Gormley" (with Gaming Minister Ron Osika), Saskatchewan NewsWatch, April 26 2002,

²¹⁰ "New 25 Year Gaming Agreement Signed," (with Chief P. Bellegarde), Saskatchewan NewsWatch, April 25, 2002.

²¹¹ Saskatchewan, Debates and Proceedings, 3rd session, 24 Legislature, Mr. Hermanson, July 9, 2002.

²¹² Alti Rodal and Nick Mulder," Partnerships, devolution and power sharing issues and implications for management," The Journal of Public Sector Management 24 (1993).

²¹³ "Interview: FSIN Chief Perry Bellegarde on Gaming Agreement," NewsWatch, April 27, 2002.

²¹⁴ See Chapter 3 for the details of the amended formula instituted.

²¹⁵ *2002 Framework Agreement*, 5.

²¹⁶ *Ibid.*, 6.

²¹⁷ *2002 Framework Agreement*, 11.

²¹⁸ *Ibid.*, 19.

²¹⁹ The definition of a Gaming Licensing Authority, as defined in the *2000 Amending Agreement*, is to “monitor and enforce compliance with the terms and conditions of licenses issued by it and shall be entitled to fix and retain all application and licensing fees relating to such licensing.”

²²⁰ *2002 Framework Agreement*, 22.

²²¹ *Ibid.*, 26.

²²² *Ibid.*, 15.

²²³ *Ibid.*, Appendix “A”

²²⁴ *Ibid.*, Appendix “A”

²²⁵ *2002 Casino Operating Agreement*, 13-14.

²²⁶ *Ibid.*, 14.

²²⁷ *Ibid.*

²²⁸ *Ibid.*, 17.

²²⁹ *Ibid.*, 23.

²³⁰ *Ibid.*, 15.

²³¹ *Ibid.*, 27.

²³² *Ibid.*, 45.

Endnotes for Chapter 5

²³³ To achieve the Aboriginal development objectives of self-sufficiency and nation-building, difficult challenges are encountered. It is crucial to utilize a conceptual framework to guide those who employ development strategies in Aboriginal

communities. As the product of a five-year research project on American Indian development, the Harvard Project (Cornell and Kalt) provides an insightful volume of comparative analysis that can be adopted as a framework for the design and implementation of Aboriginal development strategies. For an analysis of the importance of economic development for self sufficiency, nation building and self governance see Stephen Cornell and Joseph Kalt. This comprehensive analysis of Aboriginal socio-economic development is provided in its eight chapters. In addition to this volume of work, there are reports available from approximately fifty research projects commissioned for the Harvard Project Report series that are available at Harvard University (the complete address is on page vi of the above mentioned volume). See Stephen Cornell and Joseph Kalt, (eds.), What Can Tribes Do? Strategies and Institutions in American Indian Economic Development, Los Angeles: American Indian Studies Center University of California, 1992.

²³⁴ The nature of the gaming partnership is unique due to its multiple dynamics that involve various levels of government in differing contexts. For instance, gaming is a provincial responsibility, yet it generally occurs on urban reserves and therefore has implications for municipal governments; whereas, Aboriginal issues are generally in the domain of federal levels of government. Moreover, the province wears three hats in the gaming arrangement – the regulator, the partner and the competitor.

²³⁵ Alti Rodal, “Managing partnerships,” Optimum 24 (1993); and David Wright and A. Rodal, “Partnerships and Alliances,” in Mohamed Charih and Arthur Daniels (eds.), New Public Management and Public Administration in Canada (Toronto: IPAC, 1997), 275.

²³⁶ Canada, The 1999 Report of the Auditor General of Canada, Chapter 5.

²³⁷ Ibid.

²³⁸ Saskatchewan, 1997 Fall Provincial Auditor Report, 101. In addition, in the 1999 Spring Report, the Provincial Auditor recommended appropriate evaluation criteria for the performance and control matters at SIGA. These recommendations were discussed with the management at SLGA, and it was agreed that the criteria was ‘reasonable and attainable.’ However, to achieve greater success in partnerships, it is imperative to incorporate the processes of joint decision making, communication and agreement. It is plausible that if the management at the SIGA were jointly involved in these discussions, accountability measures such as performance and control could have been improved upon with greater efficacy.

²³⁹ Wright et al, 276.

²⁴⁰ Jennifer Brinkerhoff, “Assessing and improving partnership relationships and outcomes: a proposed framework,” Evaluation and Program Planning 25 (2002) (b) 217-220; and 1999 Report of Auditor General, 5.34; and Alti Rodal and Nick Mulder, “Partnerships, devolution and power-sharing: issues and implications for management,” The Journal of Public Sector Management 24 (1993).

²⁴¹ Lownes and Skelcher contend that partnerships have a life cycle that typically has four stages. At each stage the partnership has differing modes of governance and partnering relations. The governance features shift depending upon the relations, and actions of the partners. Moreover, according to Brinkerhoff (2002) (b), partnerships will deliver varying risks and benefits depending upon the life stage of the partnership. See Vivien Lownes and Chris Skelcher, "The Dynamics of Multi-Organizational Partnerships: An Analysis Of Changing Modes of Governance," Public Administration 76 (1998), 35-51. See also Jennifer Brinkerhoff, "Assessing and improving partnership relationships and outcomes: a proposed framework," Evaluation and Program Planning 25 (2000) b.

²⁴² Warren Skea, Time to Deal: A Comparison of the Native Casino Gambling Policy in Alberta and Saskatchewan, Ph.D. Dissertation, Department of Sociology, University of Calgary, 1996, 141.

²⁴³ *2002 Casino Operating Agreement*, 27-32.

²⁴⁴ *2002 Framework Agreement*, 4-6.

²⁴⁵ The Saskatchewan Liquor and Gaming Authority (SLGA) and Saskatchewan Indian Gaming and Licensing (SIGL) signed an agreement on the delegation of regulatory functions and the process for SIGL capacity assessment for the regulatory aspects of on reserve gaming activities in accordance to the *2002 Framework Agreement*. This *SIGL Regulatory Agreement* was signed at the same time as the *2002 Framework Agreement* and the *2002 Casino Operating Agreement* in June 2002. As of February 13, 2004, the SIGL changed its name to the Indigenous Gaming Regulators (IGR). According to statement made by Vice Chief Lawrence Joseph, "[w]e are very proud of the fact that IGR is the first fully developed and controlled First Nations gaming regulator body in Canada." See Prince Albert Daily Herald, February 13, 2004.

²⁴⁶ Saskatchewan Indian Gaming Authority, Sharing Success 2002- 2003 Annual Report, 3.

²⁴⁷ *Ibid.*, 3-4.

²⁴⁸ *Ibid.*, 4.

Bibliography

Primary Sources

- Canada. Auditor General. 1999 Report of the Auditor General of Canada. “Collaborative Arrangements: Issues for the Federal Government.” Chapter 5.
- Canada. National Council of Welfare. Gambling in Canada. Ottawa: Minister of Supply Services Canada, 1996.
- Canada. Royal Commission on Aboriginal Peoples. Report of the Royal Commission on Aboriginal Peoples. Volume 2, Restructuring the Relationship: Part Two: Ottawa: Ministry of Supply and Services Canada, 1996.
- Canada. Proceedings of the Senate Committee on Legal and Constitutional Affairs. December 1985, 29:23 & 30:13.
- Canada. *The Constitution Act, 1982*.
- Canada. Indian and Northern Affairs Canada. Implications of First Nations Demography. Prepared by Four Directions Consulting Group. Winnipeg, Manitoba, 1997.
- Federation of Saskatchewan Indian Nations, *An Act Respecting First Nations Gaming*, 1996.
- Federation of Saskatchewan Indian Nations, Saskatchewan and Aboriginal Peoples in the 21st Century: Social, Economic and Political Changes and Challenges, Regina: PrintWest Publishing Services, 1997.
- Province of Saskatchewan and Federation of Saskatchewan Indian Nations. *1995 Framework Agreement*. February, 1995.
- Province of Saskatchewan and Federation of Saskatchewan Indian Nations. *2002 Framework Agreement*. June 2002.
- Province of Saskatchewan and Federation of Saskatchewan Indian Nations. *Amending Agreement*. March 2000.
- Saskatchewan Liquor and Gaming Authority and Saskatchewan Indian Gaming Authority Inc. *1995 Casino Operating Agreement*. November 1995.
- Saskatchewan Liquor and Gaming Authority and Saskatchewan Indian Gaming Authority Inc. Nations. *1995 Casino Operating Agreement*. June 2002.
- Saskatchewan Liquor and Gaming Authority and Saskatchewan Indian and Gaming Licensing Inc. *SIGL Regulatory Agreement*, June 2002.

Saskatchewan, Debates and Proceedings. 2nd session, 22nd Legislature, 1992.

Saskatchewan, Debates and Proceedings. 3rd session, 22nd Legislature, 1993.

Saskatchewan. Debates and Proceedings. 4th session, 22nd Legislature, 1994.

Saskatchewan. Debates and Proceedings. 1st session, 24th Legislature, 2000.

Saskatchewan. Debates and Proceedings, 2nd session, 24th Legislature, 2001.

Saskatchewan. Debates and Proceedings, 3rd session, 24th Legislature, 2002

Saskatchewan. Department of Intergovernmental and Aboriginal Affairs. “Practical Approaches To Issues Affecting Metis And Off-Reserve First Nations People Saskatchewan.” January 1999.

Saskatchewan. Provincial Auditor. 1997 Fall Report – Volume 1, 1997

Saskatchewan. Provincial Auditor. 1999 Spring Report, 1999.

Saskatchewan. Provincial Auditor. 2000 Fall Report – Volume 2, 2000.

Saskatchewan. Provincial Auditor. 2001 Fall Report – Volume 2, 2001.

Saskatchewan. Provincial Auditor. 2002 Fall Report – Volume 2, 2002.

Saskatchewan. Provincial Auditor. 2003 Report – Volume 3, 2003.

Saskatchewan, Saskatchewan Liquor & Gaming Authority. Annual Report 1994-1995.

Saskatchewan. Saskatchewan Liquor and Gaming Authority. Annual Report 1995-96.

Saskatchewan. Saskatchewan Liquor & Gaming Authority. Annual Report 1998 – 1999.

Saskatchewan. Saskatchewan Liquor & Gaming Authority. Annual Report 2001-02.

Saskatchewan Indian Gaming Authority, Policy & Procedure Manual, November 2000,.

Saskatchewan Indian Gaming Authority. Annual Report 2001-2002.

Saskatchewan Indian Gaming Authority. Sharing Success 2002- 2003 Annual Report.

Secondary Sources

- Alfred, Taiaiake. Peace, Power, Righteousness. An Indigenous Manifesto. Don Mills, Ontario: Oxford University Press, 1999.
- Allan, John. "Public-Private Partnerships" A Review of Literature and Practice." Saskatchewan Institute of Public Policy Public Policy Paper No.4.
- Ambrose I. Lane. Sr. Return of the Buffalo: The Story Behind America's Indian Gaming Explosion. Westport, Connecticut: Bergin & Garvey, 1995.
- Anders, Gary. "Indian Gaming: Financial and Regulatory Issues." The Annals of the American Academy of Political and Social Science 556 (1998), 98-108.
- Anderson, Robert. "Aboriginal People, Economic Development And Entrepreneurship." The Journal of Aboriginal Economic Development 2 (2001), 33-42.
- Anderson, Robert and Robert Bone. "First Nations Economic Development: A Contingency Perspective." The Canadian Geographer 39 (1995), 120 -130.
- Armstrong, Jim and Donald Lenihan. "From Controlling to Collaborating: When Governments Want to be Partners." New Directions 3 (1999), 1-59.
- Armstrong, Jim. " Innovation in public management: toward partnerships." The Journal of Public Sector Management 23 (1992), 17-41.
- Belanger Yale. "The Morality Of Aboriginal Gaming: A Concept in the Process of Definition." The Journal of Aboriginal Economic Development 2:2 (2002), 18-40.
- Brinkerhoff, Jennifer. "Government – Nonprofit Partnership: A Defining Framework." Public Administration And Development 22 (2002), 19-30.
- Brinkerhoff, Jenneifer M. "Assessing and improving partnership relationships and outcomes: a proposed framework.." Evaluation and Program Planning 25 (2000).
- Caiden, Gerald. "Ensuring the Accountability of Public Officials." In Public Service Accountability: A Comparative Perspective, edited by Joseph Jabbra and O.P. Dwivedi, 17-39. Connecticut: Kumarian Press, Inc., 1989.
- Campbell, Colin and Garry Smith. "Canadian Gambling: Trends and Public Policy Issues." The American Academy of Political and Social Science 556 (1998).
- Carney, T.F. Content Analysis. Winnipeg: University of Manitoba Press, 1972.
- Cassidy, Frank and Robert Bish. Indian Government: Its Meaning In Practice. British

Columbia: Oolichan Books 1989.

Cassidy, Frank and Shirley Seward. Alternatives to Social Assistance in Indian Communities. Halifax: Institute for Research on Public Policy, 1991.

Chapman, Ian, and Don McCaskill, and David Newhouse. "Management In Contemporary Aboriginal Organizations." The Canadian Journal of Native Studies 11(1991), 333-349.

Cornell, Stephan and Joseph Kalt. "Sovereignty and Nation Building." American Indian Culture and Research Journal 22:3 (1998), 187-214.

Cornell, Stephen and Joseph Kalt. "Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations." What Can Tribes Do? Strategies And Institutions In American Indian Economic Development, edited by Stephen Cornell and Joseph Kalt, 1-61. Los Angeles: American Indian Studies Center University of California, 1992.

Dale Mason. Indian Gaming: Tribal Sovereignty and American Politics. Norman: University of Oklahoma Press, 2000.

David, Churchman. Negotiation. Lanham, Maryland: University Press of America, 1995.

Desautels, Denis. "Accountability for Alternative Service-Delivery Arrangements in the Federal Government." New Directions 6 (1999), 23-38.

DuBois, Alison, John Loxley and Wanda Wuttunee. "Gambling On Casinos." The Journal of Aboriginal Economic Development 2:2 (2002), 56-67.

Fox Consulting. "Economic Feasibility of Casino Gambling in The Province of Saskatchewan," Prepared for the Saskatchewan Economic Development and Saskatchewan Gaming Commission, January 1993.

Francois Vaillancourt and Alexandre Roy. Gambling And Governments in Canada, 1969 1998: How Much? Who Pays? What Payoff? Toronto: Canadian Tax Foundation, 2000.

Frits, Paul. "Aboriginal Gaming- Law and Policy." Aboriginal Issues Today: A Legal and Business Guide, edited by Stephen Smart and Michael Coyle, 220-234. North Vancouver: Self Account Press Ltd, 1997.

Gantz, Jeffrey. "Aboriginal Economic Development." Ivey Business Journal 64 (1999).

Hailey, John. "NGO partners: The characteristics of effective development partnerships." In Public-Private Partnerships, edited by Stephen Osborne, 311-323. London: Routledge, 2000.

-
- Helin, Calvin. "Options For Raising Capital For Aboriginal Business And Communities." Financing Aboriginal Canada Inc. In the Next Millenium. Toronto: A National Conference, 1996.
- Henriksson, Lennart and Richard Lipsey. "Should Provinces Expand Gambling?" Canadian Public Policy 25 (1999), 260-273.
- Himmelman, Arthur. "On the Theory and Practice of Transformational Collaboration: From Social Service to Social Justice." Creating Collaborative Advantage, edited by, Chris Huxham, 19-44. London: Sage Publications Ltd., 1996.
- Huxham, Chris. "Collaboration and Collaborative Advantage." Creating Collaborative Advantage, edited by Chris Huxham, 1-19. London: Sage Publications Ltd., 1996.
- Huxham, Chris and Siv Vangen. "What makes partnerships work?" Public-Private Partnerships, edited by Stephen Osborne, 293-311. London: Routledge, 2000.
- Jordan, Elizabeth. "The Challenge of Financing First Nations Small Business." Aboriginal Issues Today, edited by Stephen Smart and Michael Coyle. Vancouver: Self Council Press Ltd., 1997.
- Kathryn Gabriel, Gambler Way, Boulder, Colorado: Johnson Books Ltd., 1996.
- Kemp, Bradley. "Contextual and Relational Factors in Interpersonal Negotiation Strategy Choice." Communication Quarterly 47 (1997).
- Kenneth Kernaghan, "Partnership and public administration: conceptual and practical Considerations." Canadian Public Administration 36 (1993), 57-77.
- Kernaghan, Kenneth and David Siegal. Public Administration in Canada. Scarborough, Ontario: International Thomson Publishing, 1999.
- Krippendorff, Klaus. Content Analysis: An Introduction to Its Methodology. London: Sage Publications Ltd., 1980.
- Linder, Stephen and Pauline Vaillancourt Rosenau. "Mapping the Terrain of the Public-Private Policy Partnership." In Public - Private Partnerships, edited by Pauline Vaillancourt Rosenau, 1-18. London: MIT Press, 2000.
- Linder, Stephen. "Coming to Terms with the Public-Private Partnership." American Behavioral Scientist 42 (1999), 35-51.
- Lowndes, Vivien and Chris Skelcher. "The Dynamics Of Multi-Organizational Partnerships: An Analysis Of Changing Modes Of Governance." Public Administration 76 (1998), 313-333.

-
- Mackintosh Maureen. "Partnership: Issues of Policy And Negotiation." Local Economy 7 (1991), 210-224.
- McQuaid, Ronald. "The theory of partnership." Public Private Partnerships, edited by Stephen Osborne, 9-36. London: Routledge, 2000.
- Monahan, Patrick and A. Gerold Goldlist. "Roll Again: New Developments Concerning Gaming." Criminal Law Quarterly 42 (1999), 181-226.
- Organization for Economic Co-operation and Development (OECD). Managing Accountability In Intergovernmental Partnerships. 1999.
- Osborne, Judith and Colin Campbell. "Recent Amendments To Canadian Lottery and Gaming Laws: The Transfer Of Power Between Federal and Provincial Governments." Osgoode Hall Law Journal 26 (1988), 19-42.
- Osborne, Judith. "The Canadian Experience." Indian Gaming & The Law, edited by William Eadington, 169-224. Nevada: Institute for the Study of Gambling and Commercial Gaming, 1998.
- Pocklington, Tom and Sarah Pocklington. "Aboriginal political ethics." Corruption, Character, and Conduct: Essays in Canadian government ethics, edited by John Langford and Allan Tupper, 42-66. Toronto: Oxford University Press, 1993.
- R. v. Bear Claw Casino Ltd. Canadian Native Law Report (C.N.L.R.), 4 (1994), 81-98.
- R. v. Pamajewon. Supreme Court Report (S.C.R.) 2 (1996), 821. Retrieved at www.lexum.umontreal.ca/csc-scc/en/pub/1996/vol2.
- Raymond Saner. The Expert Negotiator. The Netherlands: Kluwer Law International, 2000.
- Ribis, Nicholas and Michelle Traymar. "The Great Spirit in a New Era: Gaming on Pequot Tribal Land." Cultural Survival Quarterly 19 (1995), 11-13.
- Rodal, Alti and Nick Mulder. "Partnerships, devolution and power-sharing: issues and implications for management." The Journal of Public Sector Management 24 (1993), 27-49.
- Rodal, Alti. "Managing partnerships." Optimum 24 (1993), 49-64.
- Schwartz, Robert. "Managing Government – Third Sector Collaboration: Accountability, Ambiguity, And Politics." International Journal of Public Administration 24 (2001), 1161-1188.

-
- Skea, Warren. Time to Deal: A Comparison of the Native Casino Gambling Policy in Alberta and Saskatchewan. Ph.D. Dissertation. Department of Sociology, University of Calgary, 1996.
- Thomas, Paul. "The Changing Nature of Accountability." Taking Stock: assessing public sector reforms, edited by B. Guy Peters and Donald Savoie 348-393. Montreal: McGill – Queens University Press, 1998.
- Thompson, William. "History, Development, and Legislation of Native American Casino Gaming." Legalized Casino Gaming In The United States: The Economic and Social Impact, edited by Cathy H.C. Hsu, 41-63. New York: The Haworth Hospitality Press, 1999.
- Vangen, Siv and Chris Huxham. "Nurturing Collaborative Relations: Building Trust in Intergovernmental Collaboration." Public-Private Partnerships, edited by Stephen Osborne, 5-31. London: Routledge, 2000.
- Wein, Fred. "Economic Development And Aboriginal Self-Government." Aboriginal Self-Government in Canada, edited by John Hylton and Phil Fontaine. Saskatoon, Saskatchewan: Purich Publishing Ltd., 1999.
- Wright, David and A. Rodal. "Partnerships and Alliances." New Public Management and Public Administration in Canada, edited by Mohamed Charih and Arthur Daniels, 263-289. Toronto: IPAC, 1997.

Internet Sources

- www.afn.ca/Programs/Economic, retrieved November, 2002.
- www.ainc-inac.gc.ca, retrieved, February 2004.
- Canadian Legal Information Institute, *Criminal Code Part VII Disorderly Houses, Gaming And Betting*, www.canli.org/ca retrieved June 4, 2003.
- Coon Come, Matthew, www.afn.ca/programs/economic retrieved November 2, 2002.
- "Economic Development Index", www.ainc.inca.gc.ca/ead/index retrieved June 6, 2003.
- "SIGA Meets Accountability Benchmarks," July, 2001, www.gov.sk.ca/newsrel retrieved December 2002.
- "Significant Progress Benchmarks," www.gov.sk.ca/newrel/2001/03, retrieved December 12, 2002.

“SLGA Actions November 15, 2000,” www.gov.sk.ca/newsrel/releases/2000
Newspaper Articles – Radio Interview – Magazine Articles

Barnsley, Paul. “Auditor Reveals SIGA Mistakes.” Windspeaker 18 (2000).

“Bellegarde blasts gov’t handling of SIGA.” Star Phoenix (Saskatoon), June 30, 2000.

Bellegarde News Conference June 12, 2000.

“Chiefs want SIGA board replaced,” Leader Post (Regina), July 8, 2000.

“FSIN changes gaming body.” Prince Albert Daily Herald (Prince Albert), February 13, 2004.

“Gaming Conference examines all aspects” Windspeaker May 24, 1993.

“Gaming official suspended,” The Leader Post (Regina), June 17, 2000.

“Interview: FSIN Chief Perry Bellegarde on Gaming Agreement,” Saskatchewan NewsWatch, April 27th, 2002.

“John Gormley New Talk Radio,” CJME/CKOM, June 28, 2000 8:35 hours.

“NDP refuses further SIGA donations,” Star Phoenix (Saskatoon, SK.), June 30, 2000.

“New 25 Year Gaming Agreement Signed,” (with Chief P. Bellegarde), Saskatchewan NewsWatch, April 25, 2002.

“News Talk Radio with John Gormley” (with Gaming Minister Ron Osika), Saskatchewan NewsWatch, April 26 2002.

Robinson, Art, Star Phoenix, October 21, 1994.

“SIGA won’t dump Lerat,” Saskatoon Star Phoenix (Saskatoon), June 17, 2000.

“SIGA: Justice to investigate spending,” Star Phoenix (Saskatoon, SK.), June 19, 2000.